

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

HEADWATER RESEARCH LLC,
Patent Owner

IPR2024-00010
Patent 9,615,192 B2

Held: March 5, 2025

BEFORE: GARTH D. BAER, STEPHEN E. BELISLE, and
RUSSELL E. CASS, Administrative Patent Judges.

IPR2024-00010
Patent 9,615,192 B2

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The above-entitled matter came on for hearing on March 5, 2025,
commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE CASS: Good morning, everyone. I am Administrative Patent Judge Russell Cass. And with me here today on my panel are Judges Belisle and Baer. This is the oral hearing in Samsung Electronics Corporation Limited versus Headwater Research, IPR2024-00010, involving U.S Patent Number 9,615,192.

Can we now have an identification from each side of who's on the line? Petitioner's Counsel, why don't you go first?

MR. JHURANI: Sure, Your Honor. Thank you. Good afternoon. My name is Karan Jhurani. And I'm with Fish & Richardson appearing today on behalf of Petitioner Samsung. With me today are Karl Renner, Jeremy Monaldo, and Parvin Ghane, all three at Fish. And Jong Choi, our representative from Samsung should be joining or has already joined.

JUDGE CASS: Thank you. How about Counsel for Patent Owner?

MR. MILKEY: Thank you, Your Honor. This is James Milkey with the Law Firm of Russ August & Kabat on behalf of Patent Owner Headwater.

JUDGE CASS: Thank you. With that, we will begin. In our hearing order, we stated that each party will have 60 minutes of time to present arguments. As far as the order of presentation goes, Petitioner will proceed first, followed by Patent Owner's response. Petitioner may then have a rebuttal, followed by a rebuttal from Patent Owner.

A few reminders before we begin. First of all, there is a public line

1 for this case. And this case is open to the public. We're not aware of any
2 confidential information, but if that -- if any does arise, please let us know.
3 Please keep your microphones muted when you're not speaking. When it's
4 your turn to argue, please speak slowly.

5 And if you hear another voice, please stop so that we don't talk
6 over each other. If either party believes that the other party is presenting an
7 improper argument or has an objection, please that -- raise that issue during
8 your presentation. Do not object at the time and interrupt the other party's
9 presentation.

10 I will keep time and give you a warning when you've gone into
11 your rebuttal time. If you'd like -- I just -- I also want to let you know that
12 we've received your demonstratives and are able to view them on your
13 screens. You can either project them if you want or just tell us the slide
14 number and we can follow along.

15 In any case, however, it would be very helpful if you could provide
16 the slide number every time you switch to or refer to a demonstrative just so
17 we can understand what's being done in the transcript. Are there any
18 questions from the parties before we begin? All right.

19 MR. JHURANI: No, Your Honor, that makes sense to us.

20 JUDGE CASS: I'll start with Petitioner. Would you like to
21 reserve time for rebuttal?

22 MR. JHURANI: Yes, Your Honors. We'll reserve 20 minutes for
23 rebuttal.

24 JUDGE CASS: All right. With that, you may begin.

25 MR. JHURANI: All right. Thank you, Your Honors. If we can
26 go to Slide 2 of Petitioner's Demonstratives, and this has our proposed

1 agenda for today's presentation. I'll plan to present on Issues 1 and 2 as they
2 relate to the TS-23.140 reference. For ease of reference, I might refer to TS-
3 23.140 today as the MMS standard or MMS specification.

4 Mr. Monaldo will present on Issues 3 and 4 as they relate to the
5 Houghton-Munson combination.

6 Let's begin with Issue 1 and go to Slide 4. The petition argued that
7 the independent claims, such as Claim 1 that's shown here, are rendered
8 obvious by the MMS standard. Now, a bulk of the petition's analysis based
9 on the MMS standard has gone undisputed in this proceeding. Headwater's
10 sole challenge is on the highlighted feature here of a plurality of message
11 delivery triggers. And of course, that will be the focus of our discussion
12 today.

13 While we're on this slide, Your Honors, I'll just draw your attention
14 to the last line of the same limitation we're looking at. In particular, see the
15 limitation that reads for at least one of the message delivery triggers. The
16 triggers is an asynchronous event with time-critical messaging needs.

17 So the limitation as a whole recites a plurality of message delivery
18 triggers and specifies that one such trigger is the asynchronous event-based
19 trigger. We'll talk more about this in the context of the following slides.

20 So let's go to Slide 9. As shown on the slide, we've identified
21 multiple message delivery triggers in TS-23.140. These, in our view, would
22 satisfy the plurality of message delivery triggers feature of the claims. We'll
23 walk through at least some of these in today's presentation. But given time
24 constraints, we might not be able to get through all of them.

25 Headwater's arguments, for its part, is that the MMS standard only
26 discloses a single trigger. And as we'll talk about today, Headwater gets to

1 this point by effectively combining or conflating various of these triggers
2 and calling them a single trigger. That analysis fits, and we'll talk about this
3 on the following slides.

4 So let's begin with the first set of triggers shown here, the
5 automated and manual retrieval requests. Let's go to Slide 11. We have
6 excerpts here from the MMS standard explaining how --

7 JUDGE CASS: Counsel, before we get into the standard, does
8 Petitioner have a construction for the term "trigger"?

9 MR. JHURANI: No, Your Honor. We have applied the
10 interpretation, the plain and ordinary meaning of this term.

11 JUDGE CASS: And do you have a position on what the plain and
12 ordinary meaning is?

13 MR. JHURANI: Sure, Your Honor. It's provided in our briefing.
14 So we've explained in our briefing, as and as we've walked through several
15 of the triggers in the MMS standard, that there are conditions that have to be
16 satisfied before the message is delivered. And that's consistent with the '192
17 patent specification and the examples.

18 And I'll just track you back to Slide 6, where it gives you an
19 example of how these triggers work. It talks about determine when to
20 transmit based potentially on several parameters which Headwater tells us
21 these parameters are the message delivery triggers of the claim. So when to
22 transmit based on potentially several parameters, such as one or more of and
23 whatever occurs. Once that happens, the message delivery is triggered.

24 JUDGE CASS: All right. So one of the arguments that Patent
25 Owner raises is kind of that technically one might think of a trigger as
26 something that's quite far removed from the actual message delivery, such as

1 their example, is turning the power on of, you know, either the user device
2 or, I suppose, some other device. And I suppose in some way, that might be
3 considered a condition that must be satisfied before transmission occurs.
4 But why would that not be a trigger?

5 MR. JHURANI: Yeah, Your Honor. That's a great question.
6 Thank you. We're not talking about conditions in a vacuum. We're not
7 talking about presence of computers for operating networks. And then
8 because of having that, you could send messages, and that would be the
9 message delivery trigger.

10 A message delivery trigger is a very particular thing. And it tells
11 you how the system is configured. That if certain conditions occur and if the
12 system is configured to understand that those conditions have occurred and
13 have an action associated with it, that if this occurs, then do this operation,
14 that would be a trigger.

15 And that's what happens in the MMS standard over and over again.
16 There's a retrieval request. When that occurs, it initiates a message delivery
17 sequence. When that -- when you have a size restriction, for example -- and
18 we'll get through all of that. Those things are tied exclusively to the
19 delivery. Size restriction when is specified, for example, in the message
20 retrieval request, if you have that, MMS tells you do not deliver until the
21 size restriction is met.

22 And that's tying it directly to delivery. So these are conditions that
23 are tied and conditioned on the delivery of the message itself. And that's
24 how the system operates.

25 JUDGE CASS: Okay. So if I understand you, the trigger has to be
26 something that is tied directly to the delivery and can't be some condition

1 that maybe has to be satisfied but isn't directly tied to the delivery.

2 MR. JHURANI: Correct.

3 JUDGE CASS: Okay. Thank you.

4 MR. JHURANI: All right. Your Honor, let me come back to --
5 let's go to -- let's -- sticking with Slide 11. We'll start talking about the
6 manual and automated retrieval requests and how they work in MMS. So in
7 the excerpt here at the top, the standard states that the MMS User Agent
8 shall be able to retrieve the MM, which is short for multimedia message, and
9 then retrieve -- that retrieval can be done either manually or automatically.

10 And these automatic and manual retrieval request modes are
11 further described in the excerpt at the bottom, particularly at the second and
12 third paragraph shown here.

13 So in automatic mode, the MMS standard says the message is
14 retrieved without the end user -- without any interaction from the end user.
15 Whereas in manual mode, the end user makes a decision whether to
16 download the message or not.

17 Let's go to Slide 12. Dr. Traynor's testimony on the slide identifies
18 these two retrieval modes as message delivery triggers. On the left, Dr.
19 Traynor explains that the MMS standard teaches a plurality of message
20 delivery triggers. And as you'll see, he provides testimony that follows,
21 noting that the recipient MMS User Agent requests retrieval of the message
22 and goes on to cite the MMS standards teaching of manual and automatic
23 retrieval, as shown in the highlighted part of the bottom left.

24 And then continuing on to the top right, Dr. Traynor explains that
25 the trigger that there's -- he's talking about another trigger, the one that we
26 talked about earlier, the occurrence of an asynchronous event with time-

1 critical messaging needs. And as shown there, he explains that this trigger
2 encompasses a user request for message delivery.

3 And consistent in applying that interpretation in the following
4 paragraph, Dr. Traynor again cites to this automatic and manual retrieval
5 modes description from the MMS standard, as you see in the bolded portion
6 on the right. And in the accompanying testimony, he sees it on disclosure to
7 note that the user agent can request delivery. And that such requested
8 delivery can be manual that is based on user request.

9 So Dr. Traynor identified both manual and automatic modes for
10 message retrieval as message delivery triggers and further identified one of
11 those retrieval modes as the asynchronous event-based delivery trigger.

12 Let's go to Slide 13. Here, you'll see that Headwater does not
13 dispute and actually admits that message retrieval request is a message
14 delivery trigger. And through the briefing that's developed, Headwater also
15 does not dispute that the user requested retrieval mode meets the claimed
16 asynchronous event-based delivery trigger. So on this record, there can be
17 little dispute that an automatic retrieval request and a manual retrieval
18 request satisfy the claimed plurality of message delivery triggers.

19 Let's go to Slide 14. Now in a sur-reply, Headwater argues that the
20 end -- automated and manual retrieval requests cannot be considered
21 different triggers. There are problems with this. It was on Headwater, as a
22 starting point, to raise this argument in its POR, no reason it should be
23 coming in, in a sur-reply and such a lay argument should not be considered
24 at this late juncture.

25 But even if we were to consider it, it still fails. First, Headwater
26 itself notes here, as you'll see in the bottom left, that the automated and

1 manual retrieval requests are different conditions. And of course, they're
2 different. The message retrieval request can be either sent under one
3 condition in manual mode or a separate condition in automatic retrieval
4 mode. So Headwater's own statement confirms that these are, in fact,
5 separate conditions or triggers.

6 Next, Headwater says, as shown on the right, that the claim
7 requires the -- requires logic to determine whether an automatic retrieval
8 request has occurred or whether a manual retrieval request has occurred.
9 That's also not true. The claim simply says determine when one of a
10 plurality of triggers has occurred. It does not require discerning or
11 distinguishing between these two different types of triggers.

12 And what's more is that the specification of the '192 patent does
13 not support that interpretation either. Let's look at that further on Slide 15.
14 We saw this in the earlier slide. But just to reiterate, we've got excerpts here
15 from the '192 patent talking about the parameters which, again, Headwater
16 calls message delivery triggers. And those condition -- and those are the
17 parameters the occurrence of which message delivery is conditioned on.

18 Now, as shown on the top left, one such trigger is initiated by one
19 or more agents, which is similar to the agent requested automated retrieval
20 request in MMS. And on the bottom right, the last line identifies another
21 trigger that could be a user requested trigger and similar to the manual
22 retrieval request in the MMS standard.

23 Notably absent from these disclosures -- and Headwater points us
24 to nothing in the specification that shows that there needs to be logic to
25 discern between the triggers. All that is required is determining when to
26 transmit based on triggers or parameters occurring. And that's precisely

1 what happens in MMS.

2 So where does that leave us? In the end, we're just left with what's
3 consistent with the specification, that we have multiple delivery triggers.

4 One, that is a user request --

5 JUDGE CASS: Counsel, can I interrupt you for a second, if that's
6 okay?

7 MR. JHURANI: Yes.

8 JUDGE CASS: So going back to Element 1D3, I understand your
9 argument is that the logic, you know, that the claim doesn't require the logic
10 to determine, you know, whether it's a manual versus an automatic trigger.
11 But what is the logic doing here in this limitation?

12 MR. JHURANI: Sure, Your Honor. The logic is determining
13 whether a condition has occurred. And it's getting that when it gets the
14 retrieval request. It gets that. And it determines it has that condition
15 occurred. And it delivers that. And that logic is what the claim tells us.

16 And let's look at -- and when you look at what the specification
17 tells us, it's not talking about how you discern between what the
18 specification clearly called a user requested trigger and an agent requested
19 trigger.

20 Presumably, those logics -- that logic is still being determined
21 where retrieval request is being received from a specification example and
22 the occurrence of which would deliver the message. But nothing in the
23 specification supports this new argument that there needs to be some
24 discernment or distinguishing between triggers that occur.

25 JUDGE CASS: So it's sufficient if the logic just determines that a
26 trigger has occurred. It doesn't need to know or determine what type of

1 trigger it is, just that some trigger has occurred.

2 MR. JHURANI: Under the claim language, Your Honors, that's
3 how we interpret it. And that's how the -- I don't see it. We don't -- we're
4 not seeing a specific identification of a particular trigger that needs to be
5 determined before message is delivered. It just says, determine one of the --
6 determined when one of the triggers has occurred.

7 JUDGE CASS: All right. Thank you.

8 MR. JHURANI: So with that, Your Honors, let's talk -- let's turn
9 to Slide 16 and talk about some of the other triggers identified in MMS.
10 And that's the size restriction specification that we see here on Slide 16. So
11 let's go to Slide 17 to talk a little bit more about this. At the top here, we
12 have an excerpt from MMS explaining how size restriction works.

13 And as shown here, it says, within the retrieval request, the
14 recipient MMS User Agent may indicate a size restriction of the return MM
15 or message. And when such a request is received, the next paragraph tells
16 us, the relay shall -- server should not deliver the message unless the size
17 restriction is met.

18 So if the recipient sets a size restriction of 3 megabytes, for
19 example, the message would not be delivered if the message is more than
20 4 -- is 4 megabytes. But if it's less than 3 megabytes, the message would be
21 initiated for delivery.

22 If we go to Slide 18, Headwater does not dispute that delivery is
23 conditioned on the size restriction being met. Rather, it alleges, as you see at
24 the top here, that the size restriction is not a separate message delivery
25 trigger because it's part of a valid retrieval request. And as Headwater puts
26 it, the valid retrieval request is one that conforms to TS-23.140

1 requirements, including, among other things, specification of size restriction.

2 As a starting point, there's no notion of valid retrieval in TS-
3 23.140. That's the word that Headwater injects into this proceeding. Also,
4 there is no requirement, as Headwater asserts and has acknowledged now,
5 for a size restriction to be included in a retrieval request.

6 And this is confirmed on Slide 19, when we look at the deposition
7 testimony of their own expert, who tells us that a retrieval request may
8 include the size restriction, or it may not. Meaning, it's optional and not a
9 requirement for the retrieval request to have this restriction.

10 So let's go to Slide 20. As Dr. Traynor explained in his
11 declaration, a retrieval request with a size restriction is a separate delivery
12 trigger because it operates differently, differently than one without the size
13 restriction. As Dr. Traynor explains on the top left, if a retrieval request
14 does not include the size restriction, message delivery may be triggered
15 irrespective of size.

16 But if the retrieval request includes the optional size restriction, Dr.
17 Traynor explains that simply receiving the request will not trigger message
18 delivery. The size of the message would additionally be assessed. And if
19 the message size exceeds the size restriction, the message is not delivered.

20 But if the message size is less than the size restriction, the message
21 is delivered. So these are necessarily different triggers. Because the same
22 message and the delivery of that same message may operate differently
23 depending on whether the optional size restriction is specified or not.

24 Let's talk about the next trigger in the context --

25 JUDGE CASS: I have a question for you. This is Judge Cass.

26 MR. JHURANI: Sure, Your Honor.

1 JUDGE CASS: I suppose, one way to think of a trigger would be
2 something that -- at least in some circumstances when it occurs -- is going to
3 be the thing that's going to release the message. So, you know, for instance,
4 when we're dealing with a request from the user device, you have a message
5 that might be sitting in the buffer. User device request comes in, that
6 triggers the release, message gets sent.

7 I suppose similarly, if you had something like, you know, wait
8 until a certain time before -- the message can't be released before a certain
9 time, a message is sitting in the buffer, there's a request. It's still going to sit
10 there. But then when that time is reached, then at that -- when that occurs,
11 that immediately, the message will be sent.

12 The size restriction, though, is a little bit different in, you know,
13 that by itself is -- it doesn't seem like that's going to be the thing that triggers
14 the delivery. What I understand what happened would be you'd have a
15 request, it's going to look at the message, say, is this message too big? If it's
16 not too big, then let's send it. I don't know, maybe I'm splitting hairs here,
17 but it strikes me as a little bit different than --

18 MR. JHURANI: Yeah, Your Honor. I think -- I appreciate that
19 question. And I think it's easy to recognize this as -- this is kind of why I
20 was giving that example of the same message. How is the trigger -- how is
21 message delivery triggered with the same message? Because if you get a
22 retrieval request, as in your example, that does not have a size restriction,
23 well, that may get delivered.

24 But that same message, that retrieval request alone is not going to
25 trigger delivery of the message when the size restriction is also included as a
26 condition. And only when that condition is satisfied, when the size

1 restriction is satisfied, and the message is below that size is message going
2 to be sent. The triggering of that message delivery operates as a sequence of
3 conditions that work together. And that's consistent with how Headwater's
4 own '192 patent describes this operation.

5 So if you look at Slide 33 of Petitioner's Demonstrative, there's
6 testimony again there of Dr. Traynor explaining the example triggers
7 described the '192 specification. One such trigger is described as waiting for
8 a certain amount of service usage. And another trigger is including a user
9 request.

10 And as Dr. Traynor explains on the top right here, a POSITA
11 would recognize that one of these triggers, the user request, could occur first,
12 followed by the occurrence of a second trigger, certain amount of service
13 usage. So the trigger could operate as a sequence and as duality of triggers.
14 And occurrence of the two would result in message delivery.

15 The same thing is what we saw earlier, where there could be one or
16 more conditions that work together, and one or more conditions and one or
17 more triggers that need to both be satisfied. And that's the case here, where
18 retrieval request and the size restriction both have to be satisfied in that case
19 where you have that size restriction. When you don't have it, only one of
20 them has to be satisfied.

21 JUDGE CASS: Okay. So it seems like there can be two different
22 timing situations. You could have one, let's say, like, the size restriction,
23 where the message retrieval request and the size restriction basically are
24 evaluated simultaneously together to determine whether you send off the
25 message. And you could have other ones that might have to be staggered in
26 time.

1 For instance, you could have a retrieval request as well as a
2 transmission usage. And the retrieval request might come first, but the
3 message is still going to sit in the buffer until the transmission usage hits a
4 certain point. And then at that later time, the message will get sent.

5 MR. JHURANI: That's right.

6 JUDGE CASS: Do these differences in timing affect whether
7 something is a trigger? Why or why not?

8 MR. JHURANI: Sorry, Your Honor. You trailed off there at the
9 end. I didn't hear the last part of your question.

10 JUDGE CASS: Oh, sorry. So do those different types of
11 sequences of time of the trigger and the condition, whether they're
12 happening at same time or whether they can happen at different times, does
13 that affect whether something is a trigger, and why or why not?

14 MR. JHURANI: In our view, Your Honor, it does not. These
15 are -- the timing aspect, that's nowhere captured in the claims or in the
16 specification. All we know is there could be multiple different triggers that
17 could occur simultaneously. There could be two conditions, potentially,
18 occurring at the same time. Or two conditions -- said better actually --
19 conditions evaluated at the same time.

20 But there could also be two conditions staggered in time. That's
21 not really changing the ultimate calculus that both of those conditions,
22 regardless of when they are received in time, would need to be satisfied. In
23 both instances, both conditions have to be present for the message delivery
24 to be triggered. One alone would not trigger delivery when the size
25 restriction is also present in our example of retrieval request plus size
26 restriction.

1 And to bring this point full circle, let's talk quickly about what we
2 have on Slide 24. This is our -- it gets to, I think, what you're getting at to,
3 Your Honor, in the context of the user agent, reachability as a message
4 delivery trigger. The way this one works -- we have excerpts from TS-
5 23.140 at the top -- it talks about the recipient message, MMS Relay/Server
6 shall store the message in the network until the recipient MMS User Agent
7 becomes reachable or until the MM expires, which Dr. Brogioli tells us
8 means for the reachability aspect is the terminal, network terminal --
9 terminal being available over a network.

10 So how would this work? It works in this almost a staggered
11 scenario we were just talking about. The server gets a retrieval request and
12 then separately checks the terminal availability over a network. And if the
13 server determines that the terminal is available or reachable over a network,
14 the server triggers delivery of that stored method, which is in a buffer
15 somewhere.

16 But if the server determines that the terminal is unavailable, the
17 server triggers delivery -- the server would retain that message and keep it
18 stored in the buffer. So simply because a message retrieval is received, it
19 does not mean that the message is delivered. The server has to do a separate
20 and additional check to confirm terminal availability. And only when the
21 server confirms the user terminal is available, the message delivery is
22 triggered.

23 So this is another -- is an example of a staggered check that the
24 terminal -- that the server is doing something separately. And only when
25 both the retrieval request and the server check happens is the delivery
26 triggered.

1 Now, before we move on from this, Your Honor, I'll just note that
2 Headwater does not dispute the operation of this trigger. And it's also not
3 disputed how this operation is similar to another example of delivery trigger
4 described in the '192 specification, which is the roaming event or connection
5 to another network trigger. We don't have time to walk through that.

6 But I'll point you to slide 26 of our slides, if Your Honors would
7 like to see the analysis there and the underlying record support. So just to
8 back up and be mindful of time here too, I just want to take a quick stock of
9 where we are. The record identifies multiple conditions for message
10 delivery as message delivery triggers. We have from Headwater in its
11 papers, not disputing that these conditions actually trigger or are conditions
12 for message delivery.

13 But we consistently see Headwater is saying that all of these
14 conditions should be bundled as one single trigger. They do this with
15 automatic and manual retrieval requests, calling it one trigger. Same with
16 the size restriction specification, well, it's part of the valid retrieval request.
17 So it's one trigger. Same for network availability, as we saw in their sur-
18 reply which -- sur-reply at 10, combining this trigger with a retrieval request.

19 And that together now being the condition. Even though, as we
20 just talked about in this scenario, the triggering devices are different. The
21 retrieval request coming from the terminal and the network availability
22 check being performed by the MMS Relay/Server independently.

23 So Headwater's narrative fails on multiple grounds because the
24 MMS standard in its own statements refute it and Dr. Traynor's provided
25 testimony explaining how -- in view of -- particularly, Dr. Traynor's
26 testimony, which has gone uncontested, explaining how these triggers in the

1 MMS standard are similar to the examples of message delivery triggers in
2 the '192 specification.

3 Now, unless Your Honors have questions, I'll transition to Claim 9
4 and then talk about those before handing it over to Mr. Monaldo.

5 JUDGE CASS: That's fine.

6 MR. JHURANI: All right. Let's go to Slide 42, Your Honors.
7 Here, we have Claim 9. And it's talking about -- it's reciting one of the
8 message delivery triggers is the expiration of a periodic timer. And the
9 petition for this claim identified two theories in view of MMS, one, based on
10 the earliest desired time of delivery feature, and another based on the
11 periodic polling feature. And Headwater's rebuttal, I'll note for the first
12 theory, the earliest desired time of delivery turns on the interpretation of the
13 term periodic.

14 So let's take up that claim interpretation first on Slide 43. As
15 Headwater puts it on this slide, periodic timer is one that recurs at regular
16 intervals. Now, to be clear, Your Honors, we don't disagree that periodic as
17 that term is -- that term includes regular recurrence. We disagree, however,
18 with Headwater's assertion that it is limited to that, particularly, in the
19 context of intrinsic and extrinsic evidence of the record.

20 Let's begin with intrinsic evidence on Slide 44. At the top, we
21 have Headwater's specification '192, talking about the roaming table
22 updates. The first sentence tells you that the roaming tables can be updated
23 periodically. The next three sentences give examples of such periodic
24 updates.

25 The first one -- the first example being updates that occur based on
26 a fixed time period. Fixed would imply a regularly recurring update. What's

1 interesting is what happens in the next few sentences. Those examples
2 speak to updates that are periodic but do not occur at regular intervals. This
3 includes periodic updates whenever the device is connected to a desirable
4 network or periodic updates occurring at the time of day that the network is
5 not busy.

6 Both of these updates, periodic updates, may vary in recurrence
7 and so may not be fixed or -- at regular intervals. And Dr. Traynor's
8 uncontested testimony on this point confirms that a POSITA reading this
9 definition would understand that periodic could encompass recurrence on
10 regular or irregular intervals.

11 The same is true if we advance to Slide 45 in the extrinsic
12 evidence. Dr. Traynor identified dictionary definitions of periodic shown at
13 the bottom of the slide. And both definitions, while noting that there could
14 be periodic, could encompass regularly occurring, recurring events, also
15 encompasses irregular occurrence, recurrence or recurrence on any interval
16 of time and space. And you can see this in the numeral two, in both
17 definitions. So as this intrinsic and extrinsic evidence confirms a periodic
18 timer then necessarily encompasses a timer that recurs at regular or irregular
19 intervals.

20 So with that, let's turn to Slide 48 and explore the earliest desired
21 time of delivery theory.

22 JUDGE CASS: Okay. Before we do that, Counsel, this is Judge
23 Cass again.

24 MR. JHURANI: Yeah.

25 JUDGE CASS: Would you agree that periodic does require
26 something that is recurring? I mean, it could be recurring regularly or

1 irregularly, but it would have to be recurring; is that right?

2 MR. JHURANI: Correct, Your Honor. We're not disagreeing with
3 that.

4 JUDGE CASS: Okay. And I seem to recall there was a proposal
5 in the petition earlier on that a periodic timer is a timer that lasts for a certain
6 period of time. And my understanding is that at least where you are now is
7 that that would have to be recurring, right? It wouldn't --

8 MR. JHURANI: So, Your Honor, I think you're referring to what
9 the Patent Owner characterized the petition as. That's not the position that
10 was espoused in the petition, but that's how it was characterized. So to be
11 clear, I can point you to Slide 48. But go on if you had a few -- if there was
12 more to that question.

13 JUDGE CASS: No. That's the question I had.

14 MR. JHURANI: Sure. Slide 48 --

15 JUDGE BAER: I'd like to follow up on that question.

16 MR. JHURANI: Yup.

17 JUDGE BAER: This is Judge Baer. Assuming you had an event
18 that happened just twice, with some time in between, and there's no rhyme
19 or reason to the time in between, would that be reoccurring? Excuse me,
20 would that be periodic?

21 MR. JHURANI: So, Your Honor, it's hard to answer in that
22 particular scenario, whether that would be -- if you're talking about two
23 isolated instances, I'm not sure. In the context of the record that's before us,
24 we see timers and messages that are occurring on a recurring basis, messages
25 that are coming in with this earliest desired time of delivery happening over
26 and over again and recurring. So it's a different context and different thing

1 that's what -- than what's presented on the record. And there's no dispute
2 that there's recurrence there.

3 JUDGE BAER: Well, there'd be no disputing that there'd be a
4 recurrence on an event that happened twice. My question is, is the
5 recurrence separated by some time enough, or does the recurrence have to
6 happen a certain amount of times? If so, is two enough, but sort of the
7 bottom limit of where you would say something is periodic?

8 MR. JHURANI: Potentially, Your Honor, I think as it stands, if
9 that event recurs, if it's just a one-time recurrence, sure. And if it -- but the
10 critical part here is what is periodic? The timing aspect of what you're
11 saying doesn't have to be a regular recurrence. It'd just be any time between
12 the two, not some preset time of -- occur every five seconds.

13 JUDGE BAER: So am I correct that your proposal is that periodic
14 just means not continuous, anything that is not continuous is periodic. Do I
15 have that right?

16 MR. JHURANI: I don't know, Your Honor. I don't know if I'd put
17 it that way. I mean, our position is that the recurring -- that periodic requires
18 recurring, whether that's on a regular interval, meaning a fixed interval, or a
19 interval that is not fixed such as what the example in the specification gives
20 us and what the dictionary definitions tell us, those can be periodic.

21 And an example of that is in Samsung-1040 which says that
22 periodic could occur, appear, or be characterized by irregular intervals. For
23 example, the backing up of data occasionally, so it wouldn't happen on some
24 predefined frequency, such as every two weeks. But it would happen
25 recurringly.

26 JUDGE BAER: Thank you.

1 MR. JHURANI: So with that, Your Honor, just I'll cut --

2 JUDGE BELISLE: This is Judge Belisle. Before we move off on
3 this, just one further question -- and maybe you're going to get to this. But
4 can you just preview for us why it matters how we interpret periodic to be
5 regularly or irregularly. I sense some big importance of this coming. And
6 why is that?

7 MR. JHURANI: Thank you, Your Honor. This is on Slide 48, so
8 you're -- I'm with you on your wavelength right now. So Slide 48 is why it
9 matters. So we know from MMS that whenever an originator or sender
10 sends a message, as it tells you at the bottom, that specifies an earliest
11 desired time of delivery, say, 7:00 p.m., that message gets sent at 7:00 p.m.
12 And now, we can have multiple of those messages happen over and over
13 again. And that's where the periodic aspect comes in.

14 So those messages retrieved -- receiving of those messages with
15 those particular type of earliest desired time of delivery, those messages
16 are -- the recurrence there is the receipt of those messages. And the receipt
17 of those messages triggers the timer. So as we see on Slide 48 at the top
18 part, a POSITA would understand that specifying the desired time of
19 delivery triggers a periodic timer that expires when the delivery time is
20 reached.

21 The next sentence, such a timer -- as Dr. Traynor tells us -- would
22 be periodic. And that each time a message is received, the timer is triggered.
23 So the periodic aspect is tied to the receipt of this particular type of message,
24 not that the message is running for -- or not that the timer runs for a
25 particular period. That comes in the later part of the sentence that says and
26 continues for a particular period at the expiration of which the message is

1 delivered.

2 So the recurrence in this context is an irregular recurrence. And
3 what will -- I'll just flag and maybe I'll reserve some of this time and
4 discussion for the rebuttal and let Mr. Monaldo address Houghton. This
5 notion actually did not go challenged in the POR. The POR actually didn't
6 even address this theory and interpreted it -- interpreted this sentence as just
7 a timer that runs for a period would be periodic. But that's not what this
8 says.

9 So with that, Your Honors, mindful of time, I'll let Mr. -- unless
10 there are further questions, I'll let Mr. Monaldo come and speak to you about
11 Houghton. Thank you, Your Honors.

12 MR. MONALDO: Thank you, Counsel. All right. Good
13 afternoon, Your Honors, I'll be presenting --

14 JUDGE CASS: Just to let you know, you have about six minutes
15 before you --

16 MR. MONALDO: All right. Thank you, Your Honor. I'll be
17 presenting today on the Houghton Grounds, and I'll start at Slide 58. On
18 Slide 58, you'll see Claim 1 of the '192 patent. Headwater only argues that
19 one feature of Claim 1 is missing from Houghton. That is the feature
20 highlighted on this slide. And it requires an interface to a network to receive
21 network element messages that comprise an identification of a respective
22 one of the authorized software components, an interface that receives
23 messages that include an application identifier.

24 Now, Headwater contends that the issues related to this claim
25 language were already resolved in an earlier IPR of Headwater's '117 patent,
26 where institution was denied. Although some similarities exist between the

1 proceedings, the relevant claim language in the '117 patent was different and
2 more detailed in the claim language here. And more importantly, the prior
3 proceeding focused on the use of IP port numbers and IP addresses in
4 Houghton rather than the application identifiers we'll discuss today.

5 And most importantly, the record in this proceeding is much
6 different than the record in the earlier proceeding involving the '117 patent.
7 Here, we have additional evidence of obviousness, including additional
8 declaration expert -- evidence from our expert and additional corroborating
9 references that were not considered in the prior institution decision. For
10 these reasons, the finding in that decision does not dictate resolution of the
11 Houghton grounds here. In the additional evidence of obviousness --

12 JUDGE CASS: Counsel, this is Judge Cass. If this helps for your
13 time, you know, we're going to make a separate evaluation of this case and
14 not feel in any way bound to what happened in that other institution
15 decision. So just keep that in mind and in how you use your time.

16 MR. MONALDO: Great. Thank you, Your Honor. We
17 appreciate that. And so with that background, I'll turn us to Slide 61 so that
18 we take a look at the evidence we have here together. So as shown in Slide
19 61, you have testimony from Dr. Traynor explaining how a person of skill
20 would have understood Houghton's push message environment as involving
21 multiple different application servers in multiple different mobile terminals.

22 We do not believe this point is controversial or that Headwater
23 disputes it. But we think it is an important point in understanding
24 Houghton's disclosure and wanted to make sure we were all on the same
25 page before discussing Houghton's figures, which show just one of the
26 multiple application servers in one of the mobile terminals. You can see this

1 on Slide 62, which reproduces Houghton's Figure 8.

2 On the right of Slide 62, Houghton's Figure 8 shows an application
3 server. On the top right, that supports a mobile application installed on a
4 mobile terminal shown at the bottom right of Figure 8. Recall that although
5 Houghton shows one application server and one application, the system
6 actually includes many application servers and many applications.

7 So how do these application servers send push messages to the
8 applications they support? They use a push server and a push client, you see
9 this at the left side of Figure 8. At the upper left, you see how the push
10 server receives event triggers and data, the push messages from the
11 application servers. The push server then relays the event triggers and data
12 to the push client, located on the mobile device shown at the lower left of
13 Figure 8.

14 The push client receives the event triggers and data from the push
15 server and passes those event triggers and data the push messages to the
16 relevant applications. In this way, the push server is acting like a digital post
17 office. It receives many messages from many senders, the application
18 servers, and then delivers them to the relevant recipients, the mobile
19 applications.

20 You can see this flow, perhaps, better in Figure 9 of Houghton,
21 which is shown on Slide 66 of our demonstratives. So at the right of Slide
22 66, you have Houghton's Figure 9, which shows how a push message is
23 delivered from the application server to its corresponding mobile
24 application.

25 As shown at the top of Figure 9, that process starts at the arrow
26 labeled A, with the application sending the push message to the push server.

1 The push server then relays that push message to the push client through an
2 access point. Those operations are shown by the arrows highlighted at B
3 and C. And at the lower part of Figure 9, the push client receives that push
4 message and then delivers it to the mobile application, which is shown by
5 the highlighted arrow labeled D.

6 Now, notably, as indicated by the label event trigger shown at the
7 middle of Figure 9, between the access point and the mobile terminal, that
8 A, B, C, D path shown in Figure 9 relates to communication of event trigger
9 from the application server to the mobile application.

10 This is further supported by the disclosure of Houghton, referenced
11 in the testimony of Dr. Traynor, shown on the upper left of Slide 66,
12 explaining how Figure 9 shows transmission of an event trigger in which, as
13 indicated by the bold text, procedure steps A, B, C are traversed, thereby
14 pushing application launch commands, lazy application updates, and lazy
15 application data updates to the mobile application.

16 Now, the dispute in this case focuses on whether these push
17 messages include an application identifier. And it is a very specific dispute
18 because Headwater does not dispute that Houghton uses application
19 identifiers. Of course, it does. When you have multiple applications, you
20 have to have something to identify the application that is the recipient of the
21 message.

22 Headwater even recognizes that the push messages at the arrow
23 labeled B have application identifiers. The only dispute is whether the
24 messages shown at the arrow labeled A include the identifier, or whether the
25 push server adds it. Because we know that the messages at the arrow labeled
26 B include the identifier, there are only two options in Houghton for the

1 server that applies the identifier. It has to be the push server or the
2 application server.

3 Houghton, unfortunately, does not tell us explicitly either way. It
4 says the message has the identifier but uses passive voice and does not
5 specify which server included the identifier in the message. Our position is
6 that a person of skill would have found it obvious that the application server,
7 the sender of the message, and only one of two options, provides the
8 application identifier and includes it in the messages sent at the arrow
9 labeled A.

10 Just as a person mailing a letter includes the name and address of
11 the recipient on that letter, so the post office can figure out how to deliver it.
12 The application server includes the identifier for the recipient application on
13 its push message so that the push server can figure out how to deliver that
14 message. This is particularly true in the context of Houghton, which as we
15 discussed at the outset, has a push server that is interacting with many
16 application servers.

17 Now, you'll also see that this is a common way that push servers
18 were known to operate. And a person of skill would have certainly found it
19 obvious that the application server includes the application identifier. Now,
20 evidence of this is shown on Slide 67. So as shown at the upper left is Slide
21 67, you'll see an excerpt from the Lee reference which explains how push
22 servers provide push data to applications. And although Lee is not part of
23 the ground, it informs how a person of skill would have viewed the similar
24 components in Houghton.

25 As shown at the lower part of that left hand excerpt of Lee on Slide
26 67, we see that the push information includes an associated application

1 identifier, specifying the application for invoking push data.

2 JUDGE CASS: Counsel, just making a note here, you're a minute
3 into your rebuttal time.

4 MR. MONALDO: All right. Thank you, Your Honor. I'll try to
5 speed things along. But I did want to point you to the upper right of Slide
6 67, I think it's important excerpt from the Lee reference that explains the use
7 of an integrated push server, which is similar to Houghton's push server and
8 how it receives push message from application servers with the application
9 identifier added.

10 Because the integrated push server is interacting with multiple
11 application servers, like Houghton, the last sentence of this excerpt tells you
12 that the associated application identifier, specifying the application for
13 invoking the push data is required. Evidence that when you have an
14 integrated push server environment, like in Houghton, the application server
15 provides the application identifier.

16 You see similar content from MMS reference at the lower part of
17 the slide. And notably, this evidence which was cited in the petition and in
18 both of Dr. Traynor's declarations, yet Headwater did not contend with it at
19 all. Headwater did not ask Dr. Traynor about these references, did not
20 submit competing evidence, and did not even address it in the arguments
21 raised in the Patent Owner response or sur-reply. You have nothing from
22 Headwater to rebut clear evidence demonstrating that it was a known
23 technique for an application server to provide an application identifier and
24 messages sent to a push server.

25 So with this background, you'll see on Slide 68, Dr. Traynor's
26 conclusion, he goes through the points we discussed. And given these facts,

1 you see his conclusion that it would have been obvious for Houghton's push
2 messaging environment to be implemented in a manner where the
3 application server provides the identifier in the push message it's sending.
4 Just as a person mailing a letter, it includes the name and address of the
5 recipient, the application server in a digital environment, sends the push
6 message with the application identifier.

7 And I'd love Your Honors to compare Dr. Traynor's testimony and
8 the evidence supporting it, the Lee and MMS reference, against the evidence
9 that was offered by Headwater. Headwater's primary evidence relates to an
10 example that Dr. Brogioli talks about where a Gmail server may have e-mail
11 messages that go to different applications, Gmail, Outlook, and Apple Mail.

12 Dr. Brogioli, in his testimony considers that and says, well, the
13 push server would presumably be in a better position. Those are the terms
14 he used, presumably be in a better position than the application server to
15 determine which application receives the message. But this is not an either-
16 or question. The law does not require us to find what is presumably the
17 better option. The law requires us to consider which options are obvious.

18 So even if Dr. Brogioli is correct in his testimony, that does not
19 mean that the option of the application server -- the only other potential
20 option would not have been obvious to consider when assessing which
21 server provides the identifier.

22 And then you'll also note that Dr. Brogioli's example is very
23 specific. There are other more conventional applications and examples
24 where the application server would direct a message to a specific
25 application. And this is particularly true when the evidence on record, Lee
26 and MMS unequivocally confirmed Dr. Traynor's testimony, that an

1 application server was known to be the source of the application identifier.

2 So unless Your Honors have any questions, I'll just briefly touch
3 on Claim 9. On Slide 76, you'll see the Munson reference. This reference
4 was used for Claim 9 in the Houghton Ground. And it talks about -- as you
5 see in the first sentence, it broadly describes pushing contents according to a
6 schedule of time, more than a schedule of time.

7 And the next sentence, Munson describes an example where the
8 server pushes content for system management maintenance during off-peak
9 hours to take advantage of lower rates. This is very similar to what's shown
10 in the '192 patent. And you can see that again on Slide 78 of our
11 demonstratives.

12 As Mr. Jhurani discussed that lower portion of Slide 78, you have a
13 example of updates in the '192 patent, where the cache updates occur at a
14 time when the network is not busy, time of day when the network is not
15 busy. It's very similar to Munson's disclosure of system maintenance
16 updates occurring during off-peak hours.

17 Unless Your Honors have any questions, I'll reserve the remainder
18 of our time for rebuttal.

19 JUDGE BELISLE: Counsel -- Judge Belisle -- just one quick
20 question. Is there any dispute over what a message is in this case?

21 MR. MONALDO: I don't believe there's any dispute over what a
22 message is in this case, Your Honor.

23 JUDGE BELISLE: What is your understanding of what a message
24 is in this case?

25 MR. MONALDO: I would say a message is a communication
26 that's sent from one computer to another, providing some sort of data. And I

1 don't believe there's been any dispute that any of these communications
2 talked about it in either any of these references are messages.

3 JUDGE BELISLE: Okay. Thank you.

4 MR. MONALDO: Thank you, Your Honor.

5 JUDGE CASS: Thank you, Counsel. So you have 14 minutes of
6 time remaining for your rebuttal.

7 MR. MONALDO: Thank you.

8 JUDGE CASS: So when you're ready, counsel for Patent Owner,
9 would you like to reserve time for rebuttal?

10 MR. MILKEY: Yes, Your Honor. I'd like to reserve 15 minutes
11 for rebuttal.

12 JUDGE CASS: All right. You may begin when ready.

13 MR. MILKEY: All right. Thank you, Your Honor. And I will
14 share my screen just for convenience. So turning to the Petitioner's Ground
15 1, we've heard Samsung say during their argument that the -- they're sort of
16 taking a new position on what a message delivery trigger must be. They
17 initially said it's something that needs to be satisfied before a message is
18 delivered. And now, they're saying it's something directly tied to delivery.

19 I, frankly, don't know what -- how a POSITA would understand
20 what is directly tied to delivery or not. I think that, for example, a working
21 power source is directly tied to delivery. A operable network connection
22 between the message server and the user agent is something that's directly
23 tied to delivery.

24 And in fact, they argue that the user agent becoming reachable is a
25 message delivery trigger. Certainly, for every message reception of the
26 message by the message server -- before it can send the message to the user

1 agent -- is something that is directly tied to message delivery.

2 So I, frankly, don't see how their newly articulated understanding
3 of what a message delivery trigger is -- doesn't encompass any necessary
4 condition for message delivery. And I think under sort of any construction,
5 whether any reasonable construction that they've potentially articulated or
6 not, if -- under the way that their theory works out, they ultimately have this
7 problem, which is that -- if we go to Slide 15 of Headwater's demonstratives,
8 there is this claim limitation, which Samsung almost completely ignores in
9 their analysis, which is that message receipt alone is not a message delivery
10 trigger.

11 And I'll pull this up. You can see in -- I'm looking at the appendix
12 or the introduction to the petition. And this is within Claim Limitation 1D3,
13 it says, the receipt of such a message by the message buffer system is not a
14 message delivery trigger for at least some of the received network messages.

15 Now, under their understanding, where something that is required
16 before message delivery happens is a message delivery trigger, full stop.
17 Receipt of a message by the message buffer system would be a message
18 delivery trigger. It has the MMS Relay/Server, what they're mapping to the
19 message link server of Claim 1 has to receive a message before it can send
20 the message to the user agent. That is a requirement that must happen.

21 So under Samsung's incredibly broad interpretation of message
22 delivery trigger, the receipt of a message by the message buffer system is a
23 message delivery trigger. And so under their interpretation, it -- basically,
24 they cannot win this -- either they -- either their interpretation of the claim is
25 wrong, in which case if their interpretation of message delivery trigger is
26 wrong, they cannot show that anything other than sort of a conforming, valid

1 message retrieval request is a message delivery trigger.

2 If their interpretation of message delivery trigger where it's just
3 some precondition that needs to be satisfied before message delivery is
4 triggered and is directly tied to message delivery, then clearly, the receipt of
5 such a message by the message buffer system is a message delivery trigger
6 for all received messages. So -

7 JUDGE CASS: So Counsel, I mean -- this Judge Cass, let me stop
8 you for a second. Does Patent Owner have a proposed construction for
9 “message delivery trigger” or “trigger” or some version of that phrase?

10 MR. MILKEY: Yes, Your Honor. Well, we believe that this is
11 consistent with the plain meaning. But I think a clear, articulated
12 construction that's not ambiguous on this would be something that is
13 sufficient to trigger message delivery. The patent, for example, talks
14 about -- you know, you can set a timer that would trigger message delivery
15 or there can be, like, a user agent requesting message delivery.

16 Those are sort of separate, distinct message delivery triggers that
17 would both be sufficient to trigger the message delivery process taken alone.
18 It's not some sort of necessary condition, as Samsung suggests. Because if it
19 were a necessary condition for message delivery, one that would encompass
20 nearly infinite conditions. Because there are lots of things that need to
21 happen within a system for a message is delivered.

22 But two, it would make this limitation of 1D3, essentially,
23 nonsensical. And it would make it impossible for Samsung to show that it
24 was satisfied. Because a receipt of a message by a message buffer system is
25 clearly necessary before the message can be delivered to the user agent. The
26 server has to receive the message before it can send it.

1 JUDGE CASS: I'm struggling a bit with understanding what's
2 meant by the word "sufficient" in your construction. Could you elaborate on
3 that a little?

4 MR. MILKEY: Yeah. So sufficient and necessary conditions are
5 something that kind of takes me back to my LSAT days, in a way. But these
6 are understood terms that which is that -- if something happens, so it -- if the
7 condition is satisfied. So for example, the -- you kind of take the -- this --
8 you know, there's a lot of things that might need to happen before a message
9 is sent. But if you take sort of the summation of all those, and you say,
10 okay, what set of circumstances will guarantee message delivery here?

11 And so the set of circumstances in this case that will guarantee
12 message delivery is the message link server, the MMS Relay/Server receives
13 a message retrieval request that is valid, non-expired, has an appropriate size
14 restriction, and there is an active, you know, communication link with the
15 user agent. If that condition is satisfied, the message will be delivered, that
16 it will be guaranteed that the message will be delivered under that condition.

17 Now, there could be other hypothetical -- this is not the way that
18 the prior art works. But there could be different triggers. For example, it
19 could be that for some messages, message receipt alone is sufficient to
20 trigger delivery. So it could be the message link server receives the message
21 from the application server and then will directly route the message to the
22 user agent. That's not something that happens in this prior art, in the TS-23
23 specification.

24 Another option would be that it could be a periodic timer. For
25 example, let's say that the message link server receives a message from an
26 application server. And then every 30 minutes, the message link server

1 sends whatever messages it received to whatever devices it's in
2 communication with. Those would be separate sufficient conditions for
3 message delivery that would be distinct from one another.

4 That's not what's going on in the TS-23 specification, which is the
5 only thing that's sufficient to trigger message delivery is you have, you
6 know, a working network connection and a valid retrieval request.

7 JUDGE CASS: So I'm still trying to make sure I understand this.
8 So are you saying that a sufficient condition is something that by itself will
9 cause something else to happen or can a sufficient condition occur with
10 other conditions as well?

11 MR. MILKEY: So I would say a sufficient condition is something
12 that by itself has to cause delivery to occur. You can think of a condition
13 broadly, though. So for example, in the instance of a message retrieval
14 request being received. It's not just that any message retrieval request is
15 received, that by itself, retrieval of any message retrieval request is not
16 necessarily sufficient to trigger delivery, right?

17 Because the message retrieval request might identify an expired
18 message that was already deleted from the server. It might specify an
19 inappropriate size restriction. It might be garbled. It might have -- there
20 might be some sort of error with it or something like that. So a message
21 retrieval request alone is not necessarily sufficient.

22 What is sufficient to trigger delivery in the TS specification is that
23 the system receives a valid retrieval request that has the appropriate
24 restrictions within it and there is a working and active connection to the user
25 agent under that condition. And that condition includes -- so that's the
26 condition is that there's an active communication link. And the message

1 retrieval request is valid and performs the specification. Under that
2 condition, message delivery is guaranteed.

3 JUDGE CASS: So you probably have some other conditions such
4 as -- let's say, a time before which the message can't be delivered. If you add
5 that condition, then does the message retrieval request then become not a
6 trigger?

7 MR. MILKEY: In that situation, the condition is that, essentially,
8 in TS-3 in TS-23, that is actually not what happens. The earliest time --

9 JUDGE CASS: Well, we'll get to TS. I just wanted to know -- I'm
10 trying to understand what the meaning of your construction is. We can get
11 to the prior art later. Let's focus on that for now.

12 MR. MILKEY: Yup. So if a message retrieval request is provided
13 that -- say, it's requesting a message that isn't ready to be sent yet, I would
14 say that that is an invalid -- it would depend on the system implementation.
15 Either that's an invalid retrieval request that wouldn't be processed so that
16 wouldn't be sufficient to trigger delivery. If it's something where it, you
17 know, the message retrieval request says, give me the message.

18 But the server says, okay, I'll give you the message only in 30
19 minutes, right? Like, I'll wait until this timer has passed and then send it. I
20 would say, in that situation, the message retrieval request alone is probably
21 sufficient to trigger delivery. It's just -- it would be a delayed delivery. But
22 it sounds like in that -- again, this is a very sort of open-ended hypothetical,
23 which I appreciate, but it's just -- it's tough to sort of analyze without
24 understanding the way the specific system is implemented.

25 But it sounds like in -- there's at least one understanding of that
26 hypothetical in which message delivery would be guaranteed. It would just

1 be guaranteed 30 minutes later. So in that situation, I would say that the
2 message retrieval request plus sort of an active communication link would
3 be sufficient to trigger delivery.

4 Does that sort of answer --

5 JUDGE CASS: I think that helps in understanding your position.
6 Why don't we go -- I still wanted to stay on the -- this construction issue for
7 a bit. So in the specification of the '192 patent on column 38, line -- starting
8 at line 50 -- I don't know if you have this. In your slides, I think they're --

9 MR. MILKEY: Yeah.

10 JUDGE CASS: I think they might be in -- I think it might be Slide
11 7 of Petitioner's slides. Yes, this part on Slide 7, on the right side, right
12 column, are all of these transmission triggers -- so looking at this, it starts by
13 saying, in some embodiments, the transmission trigger is based on waiting
14 for an amount of service usage and also including a minimum transmission
15 rate that triggers a transmission according to one or more following
16 parameters.

17 And as I read this, it sounds kind of inconsistent with the definition
18 that you've put forth. Because it seems like these things would not, you
19 know, be insufficient in and of themselves to -- maybe it would, maybe I'm
20 reading it wrong. But what's your position on that? Are these consistent
21 with your construction? And why is that if so?

22 MR. MILKEY: So, Your Honor, I would note that this passage at
23 column 30, it says the transmission trigger is based on waiting for an amount
24 of server usage and also including a minimum transmission rate. So this is
25 saying that the trigger encompasses multiple necessary conditions. So there
26 is a single trigger in this example, and it is based on two different things. So

1 this would be an example of -- you know, turning back to the prior art.

2 This would be saying, there's a single trigger and it's based on two
3 things. It's based on a valid retrieval request being received and it's also
4 based off of there being an active communication link. So this is talking
5 about a single trigger that is based on two different things.

6 And I would also note that if we do interpret -- I do want to
7 reiterate this because this -- I think this is very important and there's been no
8 discussion of this from Samsung. But if you do interpret the claim as
9 broadly as they are interpreting it where anything that is required -- so if the
10 transmission trigger would be -- for example, if you include everything that
11 the transmission trigger is based on as a separate transmission trigger -- so
12 for example, it's based off of waiting for an amount of service usage and a
13 minimum transmission rate and it's also of course based on having received
14 the message in the first place.

15 That is something that the transmission trigger would have to be
16 based on because you can't transmit something you haven't received first.
17 And so in that case, the requirement of Limitation 1D3, that for some for
18 some messages -- receipt of the message isn't a message delivery trigger --
19 could not be satisfied.

20 Samsung is trying to have it both ways. They're trying to interpret
21 message delivery trigger extraordinarily broadly for the positive limitations
22 that require a plurality of message delivery triggers. But then for the
23 negative limitation that says that message receipt isn't a message delivery
24 trigger. They're saying, oh, well, it's not alone sufficient to trigger delivery.

25 So even Samsung, I think, has our understanding of message
26 delivery trigger when it suits them. I'm turning to Headwater's Slide 14.

1 And this is from Samsung's petition at page 23, this is the bottom box here.
2 It says, given the above-described message delivery triggers, a POSITA
3 would have found obvious that message receipt alone would not trigger
4 message delivery. So they're saying that, well, a receipt of the message is
5 not a message delivery trigger because a receipt of the message alone isn't
6 sufficient to trigger delivery. That's what they're saying.

7 They're interpreting this limitation completely and consistently
8 between both the positive limitation and the negative limitation. And they
9 simply can't square it. Either they are wrong about the plurality of message
10 delivery triggers, which that's our position, that they're wrong about that.
11 But if you were inclined to go with their interpretation, they're clearly wrong
12 about message -- receipt of the message not being a message delivery
13 trigger.

14 JUDGE CASS: And doesn't that problem apply to your
15 construction too? If you have a system where the buffer receives a message,
16 and that receipt of the message is sufficient by itself to forward the message
17 on, wouldn't that also be a trigger under your definition?

18 MR. MILKEY: Yes, Your Honor. If receipt of the message were
19 sufficient to send the message on. So if you had a system where for all
20 received messages, the server automatically pass those messages on, that
21 would be a problem for us. That is not our position. And that's not how
22 we've approached infringement.

23 In any case, that's not how we've approached our -- you know,
24 that's not the way that TS-23.140 works. So, you know, that's -- but yes, I
25 agree, Your Honor, that if -- for all received messages, the system would just
26 automatically pass on that message. That would certainly violate 1D3, under

1 our construction.

2 JUDGE CASS: All right. Thank you.

3 MR. MILKEY: So with the understanding that you have to have a
4 sufficient condition in order for there to be a message delivery trigger,
5 Samsung's -- all of Samsung's theories fail. The only thing that will
6 guarantee message delivery under TS specification is a valid retrieval
7 request that conforms to the requirements, plus an active connection to the
8 system, you know. These are sort of things that -- including a working
9 power source. These are things that are just required for system operation to
10 work in this -- in the way that they need to.

11 But when you take all of that together, that is what is sufficient to
12 trigger delivery. And they all depend on this message retrieval request.
13 That it's all very closely tied to this one single thing that sort of is an impetus
14 for it all, which is the message retrieval request.

15 The petition argued that message retrieval was one of a plurality of
16 message delivery triggers. Of course, you can have either automatic or
17 manual message retrieval requests, just like you can have retrieval requests
18 that are, you know, instigated by different users.

19 For example, I might be using my phone at one instance and, you
20 know, all of request message retrieval. And then I might give my phone to
21 my wife, and she might have message retrieval, you know, she might initiate
22 a message retrieval. That doesn't make those message retrieval requests be
23 two separate message delivery triggers.

24 This is a single message delivery trigger, especially from the
25 perspective of the server, which has no way to even understand which of
26 these -- basically, it has no way to understand how the message retrieval

1 request was initiated. It's the same message retrieval request in either
2 instance. And the server has nothing to do with that, doesn't care about that.
3 There's no logic to determine.

4 And, you know, we're talking about a message link server that has
5 logic to determine something. If you're looking at the sort of the outsides of
6 that and saying, oh, well, there is something in this -- you know, you could
7 potentially have a user device that works in two different ways that would --
8 frankly, I think that if that's the claim interpretation, it would be impossible
9 to ever evaluate for infringement. Because you can't know all the universe
10 of devices that could possibly work with a server like that.

11 You have to evaluate the server itself and how the server is
12 configured, not sort of -- you know, if devices working with the server could
13 potentially do something in some way that might, hypothetically, you know,
14 do something that the server could never determine. So I think that that's an
15 important aspect of this. But --

16 JUDGE CASS: So Counsel, let me ask you another question. This
17 is also on that interpretation issue. Is there any intrinsic evidence for the
18 construction you've laid out that a message delivery trigger has to be
19 sufficient by itself to cause message delivery?

20 MR. MILKEY: So, Your Honor, I think that the specification does
21 not sort of define a message delivery trigger. I think that that's a fairly
22 straightforward aspect. And we have expert testimony that addresses that. I
23 don't think that the intrinsic record is explicit or I don't think you can tell -- I
24 do not think that the intrinsic record conclusively resolves this.

25 I do think that message delivery trigger is a known term that even I
26 think Samsung agrees. It says, if the condition is satisfied, the rule is

1 triggered. And this is from Samsung's briefing and extrinsic evidence. This
2 is -- I'm looking at the sur-reply -- sorry, I'm looking at Samsung's reply
3 here. It says, if the condition is satisfied, the rule is triggered. So --

4 JUDGE CASS: So, it's like saying that it has to be sufficient by
5 itself or that other conditions can't go along with it.

6 MR. MILKEY: Well, I think that the --

7 JUDGE CASS: I mean, what Samsung is saying, I think is in its
8 broad terms is probably pretty uncontroversial. But I think you may have
9 added a couple of additional limitations in there, at least as I understand it.
10 And so that's what I'm trying to figure out. And if there's not intrinsic
11 evidence, is there a dictionary definition or patent of record or something
12 that you can point to or we can look at that would support -- or would give
13 or support the definition you're proposing?

14 MR. MILKEY: And I'll also clarify my earlier answer. I do think
15 that the intrinsic record, at least the structure of Claim 1 shows that it can't
16 just be a necessary condition, right? There's sort of two flavors of conditions
17 in logic. There's necessary conditions and there's sufficient conditions. A
18 necessary condition is something that it won't itself cause something to
19 happen, but it's sort of a prerequisite.

20 So, for example, you need oxygen to start a fire. That's a
21 prerequisite to start a fire. But the presence of oxygen alone doesn't sort of
22 guarantee starting a fire. You also need other things in order to make that
23 happen.

24 So if we're talking about -- basically, I think Samsung agrees that a
25 message delivery trigger is a condition. The only question is whether it's a
26 necessary condition or a sufficient condition. And if it's a necessary

1 condition, Limitation 1D3 does not make any sense. Because it says the
2 receipt of such a message by the message buffer system is not a message
3 delivery trigger.

4 And of course, as I've said repeatedly, receipt of a message by the
5 message buffer system is a necessary condition for the message buffer
6 system to send that message to the user agent. So it cannot be a necessary
7 condition. And we agree that it has to be a condition. So it must be a
8 sufficient condition.

9 So I do think that in this aspect, the intrinsic record, specifically,
10 the claim structure does mandate that -- under sort of any reasonable
11 interpretation -- we have to say that message delivery triggers are sufficient
12 conditions for message delivery.

13 JUDGE CASS: Now, one way one could look at this highlighted
14 portion of Limitation 1D3 -- what slide is this, remind me?

15 MR. MILKEY: This is actually the petition.

16 JUDGE CASS: Oh, okay.

17 MR. MILKEY: Yeah.

18 JUDGE CASS: I just wanted to try to make the record clear. But
19 that -- when it says the receipt of such a message by the message buffer
20 system is not a message delivery trigger, that -- and that's kind of the
21 patentee acting as their own lexicographer and saying, well, ordinarily it
22 might be, but we're just going to define it out.

23 We're going to carve that out of what we consider a message
24 delivery trigger. And that way, we don't have to worry about, you know, is
25 that or isn't that included within the construction because we've carved it out.
26 Why wouldn't that be a way to look at this?

1 MR. MILKEY: Yes, Your Honor. So I think that this says, for at
2 least some of the received network element messages, the receipt of such a
3 message by the message buffer system is not a message delivery trigger. So
4 this is saying that this can be a message delivery trigger. In fact, it's saying
5 that receipt of the message can be sometimes sufficient to trigger delivery.

6 But that can't be the only message delivery trigger that we have in
7 the system. It can't just be that the receipt of the message is going to be
8 sufficient to -- for all messages to trigger delivery. We have to have
9 something else that will trigger delivery.

10 And so I appreciate the question, but because there's -- this is clear
11 that this just applies for some of the received network element messages.
12 This isn't a case of lexicography. And I -- or sort of, you know, spelling out
13 that this cannot be a message delivery trigger. It's saying that, in fact, I think
14 the clear implication is that it could be a message delivery trigger for certain
15 messages. It just can't be a message delivery trigger for all messages.

16 JUDGE CASS: So what about -- thank you for that clarification. I
17 understand that -- your position now. I mean, could this be saying that the --
18 for some of the forward -- so a deliberate trigger would not -- let me step
19 back for a minute. So say that, you know, the first thing that would happen
20 in this cascade is the message buffer system receives a message and it's
21 saying, at least sometimes, that's not a trigger. And when it's not a trigger,
22 that would be because something else has to happen, some other condition
23 has to be satisfied before the message is sent.

24 So for instance, let's say there was a time-of-day restriction that it
25 can't be sent before 3:00 p.m. The receipt of the message by the buffer
26 system isn't going to be the trigger because the message is going to sit there

1 until 3:00 p.m. But then when 3:00 pm happens, that's going to be the
2 trigger because that's going to be the thing that causes the message to be sent
3 immediately thereafter.

4 MR. MILKEY: Yes, Your Honor.

5 JUDGE CASS: Is that actually a valid way to look at this claim
6 limitation?

7 MR. MILKEY: So, Your Honor, I would say in that instance, you
8 know, the 3:00 p.m. being hit at that point would be -- at that point sufficient
9 to trigger message delivery. So that would be the trigger and the receipt by
10 the message buffer system. Again, yes, that would not be a message
11 delivery trigger in that instance. I agree that that wouldn't be the message
12 delivery trigger because that wouldn't be sufficient to cause delivery.

13 Under Samsung's interpretation, however, in your example --
14 because receipt of the message is necessary for delivery, in that example,
15 where it waits until 3:00 p.m. -- even in that example where receiving the
16 message alone doesn't cause delivery, that would have to be a message
17 delivery trigger. Because that's closely tied to delivery of the message and is
18 necessary for the message to be delivered.

19 So I agree exactly with your hypothetical there, which is that is an
20 example of a way where the receipt of the message alone, you know, that's
21 not a message delivery trigger.

22 The way that Samsung is applying it, though, is that you --
23 Samsung actually said during the oral argument that the conditions can
24 happen or be evaluated at different times, and that doesn't impact whether
25 it's a trigger. So in your example, Your Honor, the server would receive the
26 message. It would be evaluated. It would say, okay, I've received this

1 message.

2 And so that's a -- that's now a message delivery trigger under
3 Samsung's interpretation. And then it's going to say, oh, now we also have
4 to wait until 3:00 p.m. And now, it's going to evaluate when 3:00 p.m. has
5 arrived. And then it's going to evaluate that condition. And that's going to
6 be a separate message delivery trigger.

7 But again, that makes it impossible for Samsung to show that this
8 negative limitation of 1D3 is satisfied. Because in all cases, the receipt of
9 the message is a necessary condition for message delivery. And so the
10 system is going to receive the message. It's going to say, okay, I've
11 evaluated that, I've received the message.

12 And Samsung admits that that's a message delivery trigger under
13 their interpretation. So it's not clear to me -- in fact, I just -- I think it's
14 impossible for Samsung to win on the plurality of message delivery triggers
15 limitation and also win on this one aspect of 1D3 which is that the receipt of
16 a message by the message buffer system is not a message delivery trigger for
17 at least some messages. I think that those are two completely inconsistent
18 positions. And I do not know of any way that would be possible to satisfy.

19 JUDGE CASS: Yes. But let me give you one more hypothetical,
20 then I'll try to move on. So we talked about our 3:00 p.m. example, where
21 first, the message was received by the buffer system. And then some later
22 point, it hits 3:00 p.m. and gets sent.

23 So under your understanding of the claim, if you have multiple
24 conditions occurring simultaneously here, so for instance, there's a receipt of
25 the message by the message buffer system and there's also a -- say, a size
26 restriction. In that case, would the receipt of the message by the message

1 buffer system be a message delivery trigger or not?

2 MR. MILKEY: So receipt of a message by the message link
3 server, I don't think is sufficient to trigger delivery. It has to be a valid
4 message. It has to be something that requests delivery of a message that
5 exists and has been previously received. And so there is some analysis that
6 goes on there. And it ultimately determines was this a valid retrieval
7 request? Do I have an active connection? Can I send this message?

8 And that environment altogether, that set of circumstances, that
9 taken together is the message delivery trigger. You know, frankly, I don't
10 think that an active connection or a working power source is something that
11 most people would think of when they think of, you know, a message
12 delivery trigger. Samsung kind of tries to say that this active connection
13 thing is a message delivery trigger, but that's just sort of how things get
14 delivered within systems.

15 But ultimately, right, it's that, you know, the way that TS works is
16 there's a message retrieval request. It has to actually identify a specific
17 message that wants to be retrieved. And then it'll include, you know, it'll be
18 sent at a certain time. And so that message has to exist. It has to be not have
19 been deleted from the server.

20 But when -- if we think of the concept of a valid retrieval request,
21 which I think is a pretty straightforward concept, which just means a
22 retrieval request that is operative and, you know, is identifying a message
23 that's able to be retrieved, that is the message delivery trigger within the TS
24 system.

25 JUDGE CASS: All right. Thank you, Counsel.

26 MR. MILKEY: I want to very briefly talk about Claim 9 for this

1 Ground 1. We've had a sort of shifting of theories. First, Samsung initially
2 argued that periodic polling was an expiration of a periodic timer. They
3 said, explicitly, that the MMS User Agent uses periodic polling to retrieve
4 messages.

5 And I invite you, actually, to look at -- we're constrained on time.
6 So I don't want to get into that right now. But you can look at the deposition
7 testimony of Dr. Traynor on this point. In his deposition, he was explicit
8 that, yes, it's the MMS User Agent that's initiating this periodic polling.
9 This is just how phones work.

10 This is, you know, the MMS User Agent is contacting these
11 external servers. It turned out that that was completely incorrect. And
12 Samsung is now taking a new position in reply that, oh, it's actually the
13 MMS Relay/Server that engages in the periodic polling.

14 The periodic polling theory, however, doesn't work. Because
15 periodic polling is just the means by which the MMS Relay/Server retrieves
16 the message from an external server, like an application server. It's not
17 something that causes that message to be delivered to the user agent. It's not
18 at all sufficient for delivery to the user agent.

19 And regarding, like, expiration of earliest desired time of delivery,
20 this is a setting that first, it doesn't actually trigger delivery to the MMS User
21 Agent either. Because what this says is that we're not even going to inform
22 the user agent that this message exists until this earliest desired time of
23 delivery has passed. Once the time of delivery has passed, we will then
24 inform the user agent that this message exists. And now, it can request this
25 message. And only then would the retrieval request even potentially happen.

26 And as we discussed, the retrieval request is the thing that actually

1 causes the message to be delivered. But even if we took this sort of weird
2 view of a message delivery trigger, which is that it's something that's
3 necessary to -- you know, something that -- it happens along the chain of
4 causation that is some way related to message delivery and is a necessary
5 condition for message deliver, even in that instance, the earliest desired time
6 of delivery, it doesn't meet Samsung's construction because it's not a
7 recurring timer. It's a set time at which this message will be forwarding.
8 But there's no evidence that it recurs at all. It's actually just a single timer
9 for a single message.

10 And so, for example, you know, the server might get one message
11 at 5:00 p.m. and another message at 6:00 p.m. And both of those messages
12 have 24-hour earliest desired time of delivery. So it'll wait until 5:00 p.m. to
13 deliver -- the next day to deliver one of the messages and wait until 6:00
14 p.m. the next day to deliver the other message. Those are two separate
15 timers. Those aren't -- that's not a recurring timer, as the claim requires.
16 That's two timers that each just go for a set period of time.

17 And as we pointed out in our Patent Owner's response, Samsung is
18 essentially reading out the periodic timer limitation from the claim. And it's
19 just saying that as long as there's a timer, you know, then the limitation is
20 satisfied.

21 But even if we accept their construction, that periodic means
22 regularly or irregularly occurring, there's no recurrence at all in their earliest
23 time of delivery theory.

24 Regarding their ground side --

25 JUDGE CASS: This is Judge Cass. So for the construction,
26 Petitioner put up a couple dictionary definitions saying that periodic could

1 be regular or irregular. Do you dispute that?

2 MR. MILKEY: We do dispute that, Your Honor. Although, I
3 would say that in the interest of time and because we frankly think it doesn't
4 matter to this dispute, given the way that they have proposed the
5 construction, which is different than the way they applied it in the petition,
6 we think that we win even under their construction. So I would prefer to
7 utilize my time at this presentation, just arguing under their construction.

8 But we do believe that that periodic in this context of, like,
9 computing in automated systems does require periodicity where there is
10 regular recurrence.

11 JUDGE CASS: Okay. That's fine.

12 MR. MILKEY: So I would like to briefly address their Ground 5
13 theory, which is Houghton and Munson. And on this point, Your Honors, I
14 would like to emphasize that the -- one thing I noted from Samsung is that
15 they said, well, we invite you to compare the evidence that we have
16 submitted versus Patent Owner's evidence on the obviousness of modifying
17 Houghton to include the application server -- the messages from the
18 application server to the push server, having this application identifier.

19 All of that evidence and argument that they presented is something
20 that wasn't in the petition. So I think it's -- I would frankly submit that what
21 they're asking you to do is quite unfair. Because they have submitted this
22 lengthy expert declaration in their reply brief.

23 In fact, the expert declaration in the reply brief is over 11,000
24 words. This is obviously something that we didn't have when we were able
25 to submit our expert declaration. And 11,000 words, we apply some basic
26 math, that's almost twice the word length of what a reply can actually

1 include.

2 So Samsung presented entirely new theories with their reply. They
3 bolstered those theories, those new and inappropriate new theories, with an
4 expert declaration that more than doubles with the permissible word count
5 for a reply. And so, yeah, I think if you're sort of comparing, you know, this
6 volume of new theories with what our expert was able to address, our
7 experts certainly couldn't have addressed all of those things because he
8 didn't have access to those things.

9 But I would submit that -- first of all, those new theories shouldn't
10 be considered. The petition was very clear that their -- the logic of their --
11 the reasoning why they believe that the message is sent by the push server to
12 the application server -- or sorry, sent by the push server to the user agent
13 included an application identifier was because -- sorry. The reason why they
14 contend that the message is sent by the application server to the push server.
15 and this is in turning to Headwater's Slide 34, there's this application server
16 and the push server communicating.

17 They say that this teal box here, the event trigger and data has to
18 include that identification of an application. Because this purple box, the
19 messages between the push server and the push client include the application
20 identifier. They didn't provide any reasoning or analysis for that. They just
21 said that, you know, we've shown an application identifier in the purple box,
22 so therefore it exists in the teal box.

23 They didn't have any sort of obviousness rationale. They didn't
24 have any reason to modify. They didn't provide anything on that point. It
25 was completely sparse. It was completely conclusory.

26 What our expert made clear is that there are many instances in

1 which the application server is not able to identify the application to which
2 the message is directed. And we give this example -- and by the way, this
3 was submitted with our Patent Owner response.

4 Samsung had an opportunity over an 11,000-word reply
5 declaration to address this example, which is that, for example, let's say you
6 have a Gmail server that has e-mail messages that can go to any number of
7 client e-mail applications. So let's say, for example, that I have Apple Mail
8 installed on my phone and I have Outlook on my tablet.

9 And so the Gmail server and application server, in this case, will
10 send a push message to the push server. The push server, which is in direct
11 contact with my devices, it communicates directly with my phone and my
12 tablet, it's the push server that's able to determine which applications are
13 registered to receive something that's going to my Gmail address, you know.

14 What the application server will include is my e-mail address. It
15 won't include an application identifier. And then the push server determines
16 which application identifier to include in messages to which device because
17 that's the way that these things work. The device -- the user agent can
18 communicate and say, Mr. Milkey's Outlook app on his tablet wants
19 notifications from these -- from messages sent to this e-mail.

20 And his Apple Mail on his phone wants the same notifications but
21 sent to a different application. And so it's -- this example, I think, makes
22 very clear why the push server is in a better position to determine which
23 application the message should be sent to.

24 And while over the 11,000-page -- sorry, the 11,000-word reply
25 declaration submitted by Dr. Traynor, he doesn't actually address this
26 example at all. He just says, oh, necessarily -- there's sort of some

1 conclusory testimony that necessarily the push server would not be in as
2 good of a position as the application server. And the application server, in
3 fact, needs to know which message it's going to.

4 I think this example makes clear that the application server that --
5 like, the Gmail server here, doesn't actually need to know which specific
6 applications the e-mail message is going to. In fact, it just needs to know
7 what e-mail address the message is going to. And then the push server can
8 figure that out from there. And there's been no motivation to modify or
9 anything like that.

10 We have a new theory in their reply brief, that this was -- that
11 application identifiers were known things. And, you know, you -- again,
12 that's a totally new theory, not in the petition. But even if considered, they
13 don't actually give a reason to apply it to the prior art here, you know.

14 KSR, I think, is clear that you can't just point to the fact that the
15 elements were known in the art. You actually have to have a reason to
16 modify the art in a certain way. It doesn't -- you know, just -- again, I'm not
17 saying that this has to be the best possible option. But there has to be a
18 reason to pursue a certain option. And Samsung hasn't identified anything
19 like that. Certainly, not in the petition and even in the reply, we don't think
20 that they've identified anything like that.

21 JUDGE CASS: Counsel, sorry, you're about a minute into your
22 rebuttal.

23 MR. MILKEY: Okay. Thank you, Your Honor. And I'll be brief
24 with the Claim 9 discussion of Houghton and Munson. First of all, the
25 periodic message -- the petition talked about a message from Houghton. It
26 wasn't even alleged to be a message delivery trigger. It was just something

1 that made sure that the connection isn't time expired. There's no discussion
2 of why that's a message delivery trigger.

3 JUDGE BELISLE: Counsel, this is Judge Belisle. If we were to
4 agree with Petitioner on -- that are disclosing a message delivery trigger, are
5 there any claims that survive for you?

6 MR. MILKEY: Yeah. I think Claim 9 -- I'm not sure exactly what
7 message delivery trigger you're talking about. But Claim 9 survives if
8 there's a plurality of message delivery triggers. Because we don't believe
9 that they've satisfied that the -- that there's a expiration of a periodic timer as
10 a message delivery trigger in either ground.

11 JUDGE BELISLE: Okay. Continue.

12 MR. MILKEY: So just to be clear, this argument in particular is
13 applying to Claim 9. They're pointing to a periodic message. But they don't
14 have any analysis whatsoever as to how the periodic message is a message
15 delivery trigger. They didn't allege that in the petition. And they haven't
16 explained that in the reply.

17 The reply just said, well, we didn't explain why it wasn't a message
18 delivery trigger. It's kind of their rationale. But obviously, it's on the
19 petition to -- on Petitioner's specifically to set forth their individual theories,
20 and they have the burden of proof.

21 And then regarding the combination of Munson in, I've -- they say
22 that content being pushed according to a schedule of time or event is a
23 periodic -- that that's the expiration of a periodic timer. This is Slide 45 of
24 Headwater's Demonstratives.

25 And in Slide 45, I've reproduced the entirety of the portion of the
26 prior art that they rely on for this allegation, which is Munson in at

1 paragraph 44. And it just says that, for example, an application service
2 provider can use pushes, i.e., pushing contents for a system maintenance
3 purpose during off-peak hours to take advantage of lower rates. This doesn't
4 have anything to do with a timer at all. It's just saying that whoever is
5 running the server can decide to look at network usage and push content
6 whenever things are -- network usage isn't too high.

7 And, you know, basically, the implication is that anytime that --
8 the implication by Samsung is that anytime there's a schedule of a time or
9 event that there has to be a recurring or it would be obvious to -- for there to
10 be a recurring timer that would do that.

11 But as an example, I have weekly meetings for this client every
12 week. And I initiate the Zoom link for those meetings at a specific time.
13 But I don't use a recurring timer to do that. It's not a recurring timer that
14 does that. I manually do that. And there's no timer that's telling me to do
15 that. I just do it. And so their assumption is that there would be a recurring
16 timer, but they don't explain why that would be desirable at all.

17 And if we're talking about pushing contents, for example, for a
18 system update or something like that, normally, engineers will evaluate the
19 system update, make sure that it's ready to go. And they'll sort of send it off
20 and not have a recurring timer that's doing that. Because these types of, you
21 know, pushing group content, it's not something that -- you need to make
22 sure that content is available before you can push it.

23 And so a recurring timer doesn't necessarily fit into that scenario.
24 There's no evidence or reason why you would need to have -- or want to
25 have -- a recurring timer for -- from this very, very brief and cursory
26 discussion of Munson.

1 So unless there are any questions, Your Honors, I'll reserve the rest
2 of my time for rebuttal.

3 JUDGE CASS: All right. Thank you, Counsel. So you've used up
4 51 minutes, so you'll have nine minutes remaining.

5 All right. With that, Counsel for Petitioner, you have 14 minutes
6 of rebuttal remaining. And let me know when you're ready.

7 MR. JHURANI: Sorry, I only got the cameras looking at the right
8 side. Okay. Thank you. Good afternoon again, Your Honors. I'll start by
9 noting that, unless you have questions on the Independent Claim 1 on the
10 MMS Grounds, we'll rest on that ground. And my rebuttal as it relates to
11 MMS will be limited to Claim 9.

12 JUDGE CASS: Yes. Actually, I do have a question or maybe a
13 series of questions. We'll see how it plays out. So I want to focus on the
14 exchange that I had with Patent Owner's counsel about the portion of
15 Limitation 1D3 which says that for -- wherein for at least some of the
16 received network element messages, the receipt of such message by the
17 message buffer system is not a message delivery trigger. And I don't think
18 that's something we really discussed the first -- you and I discussed, or you
19 discussed the first time around.

20 And my understanding is that the Patent Owner's position is that
21 you've got to have -- this means you've got to have some situations where a
22 message is received by the message buffer system. And then later, you've
23 got some other events or condition that happens that causes the message to
24 get sent, that's the trigger. Or potentially, you could have a situation where
25 you receive the message into the message buffer system and there's some
26 other conditions and kind of a combination of those conditions would be one

1 trigger.

2 Let's see, first of all, if you agree with that or have any comments
3 on that. And if you don't, what your response would be and just basically
4 get your reaction to that exchange.

5 MR. JHURANI: Yeah, Your Honor. Just so that I'm taking this in
6 pieces, so I think you're first asking about the 1D3 limitation, where it says
7 where and for at least some of the received network element messages, the
8 receipt of such a message by the method buffer system is not a message
9 delivery trigger.

10 JUDGE CASS: That's correct.

11 MR. JHURANI: And if I'm understanding the question, are you
12 asking whether that is a trigger or not or -- I'm sorry, I just want to make
13 sure I --

14 JUDGE CASS: More broadly, I'm just asking if you have
15 response to the position from Patent Owner on this point.

16 MR. JHURANI: Right. Yeah. And I'll flag that it's this notion of
17 how Patent Owner is using this -- our arguments here. And if it's easier, we
18 can look at Slide 39 of Petitioner's Demonstratives to see what was actually
19 said. And in particular, I'll point you to paragraph 157 on that slide, where
20 Dr. Traynor says, moreover, given the above disclosures of the different
21 message delivery triggers --

22 JUDGE CASS: Counsel, what slide are you on?

23 MR. JHURANI: Petitioner's Demonstratives, 39.

24 JUDGE CASS: Thirty-nine, okay. All right. I'm there.

25 MR. JHURANI: Okay. And so paragraph 157 on the right says,
26 moreover, given the above disclosures of the different message delivery

1 triggers, which we've talked about in which Dr. Traynor identified in the
2 context of MMS. A POSITA would have found obvious that the receipt of a
3 message alone would not trigger message delivery. And this is the part that
4 Headwater leaves out, particularly considering the other conditions that can
5 be implemented and which would then need to be satisfied before the
6 message is delivered.

7 So that trigger, that message receipt could be in some instances a
8 delivery trigger, as Counsel was saying. And in some instances, it won't be
9 a trigger. Because there are other conditions, other triggers that could be
10 brought to bear, and that would be -- on which delivery is conditioned. And
11 that's precisely --

12 JUDGE CASS: So -- yeah, go ahead.

13 MR. JHURANI: Go ahead.

14 JUDGE CASS: So suppose you have a situation where the
15 message buffer system receives the message and there's also a size
16 restriction and because it's within the size restriction, that forwards the
17 message on, is that -- in that case, is the receipt of the message by the
18 message buffer system, a message delivery trigger?

19 MR. JHURANI: In the context of MMS, Your Honor, is no.
20 Because that message is received and then certain things happen. It's not
21 automatically being sent. That receipt by itself is not doing anything. There
22 are triggers in MMS that Dr. Traynor has identified.

23 And in your example, the retrieval request, which would
24 presumably specify the size restrictions of those two conditions. And only
25 when those two conditions are satisfied, among other things, like other
26 conditions of message -- the MMS user device being available, only in that

1 case when those conditions are all satisfied, those triggers are all satisfied,
2 the delivery would happen.

3 So you'd have a sequence of -- in your hypothetical there, there
4 were a couple triggers that would both need to be satisfied before message is
5 delivered.

6 JUDGE CASS: And that the couple of triggers would be what?
7 The message user device and the size restriction?

8 MR. JHURANI: In that particular example, assuming the system
9 is not configured with this determining the availability of the device over the
10 network, yes, so those two. Now, if the system was also configured to
11 determine the availability of that device and do that added and separate
12 check, then the occurrence of three triggers would be needed before the
13 message is delivered.

14 JUDGE CASS: Does there have to be -- I guess, in the prior art or
15 maybe just generally, does there have to be a retrieval request from the user
16 device? Is that always going to happen?

17 MR. JHURANI: It doesn't have to be, Your Honors. I mean, I --
18 and we got -- we've got lots of examples in the '192 specification where
19 the -- there could be other triggers, right? So it doesn't have to be that. It
20 certainly is that in the context of the TS-23.140 reference as one of the
21 triggers. But generally speaking, there could be others and there could be a
22 series of other triggers that, together or alone, could trigger delivery.

23 JUDGE CASS: So one way to look at this could be -- kind of
24 think of it in terms of, like, a flow chart, where first thing that happens is you
25 have the receipt of a message by the message buffer system. That's not a
26 trigger. But then you have a -- you know, one or more conditions after that

1 that have to be satisfied in order to send the message. And, you know, one
2 or more of those conditions would be the trigger or triggers.

3 MR. JHURANI: Correct.

4 JUDGE CASS: Is that kind of reflect --

5 MR. JHURANI: So Your Honors, in the context of the claims,
6 that's right. So you would get the message. And then the message link
7 server would determine whether one or more triggers have occurred. So the
8 system would presumably be configured to detect occurrence of one or more
9 triggers. And when those one or more triggers occur, the message delivery
10 is triggered and initiated. And the message is delivered.

11 What those triggers are, you know, in the context of MMS we've
12 litigated that. But there are lots of other examples, as you saw in the
13 specification.

14 JUDGE CASS: All right. Thank you.

15 JUDGE BELISLE: Counsel, Judge Belisle, let me -- you just said
16 a word right there that I just want to focus on as we try to get some meaning
17 to trigger. So this message delivery trigger, would it be fair to say that it's an
18 event or a condition that initiates the process of sending that message?

19 MR. JHURANI: It could be, Your Honor. It could initiate the
20 delivery of the message. And in one instance is that would be retrieval
21 requests. It could also be the gating factor that the message is not delivered
22 until the system determines that a condition has occurred. So in my view,
23 it's the initiation and the delivery of the message that is gated.

24 So basically, taking in the specification, just to help you out there,
25 let me point you to -- actually, I don't have that handy. But there's a
26 description in column 70 in this portion that talks about when that

1 condition -- when these conditions, one or more conditions, have occurred.
2 The materials are taken out of the buffer and initiated. The buffer -- the
3 packets are assembled and then sent off.

4 JUDGE BELISLE: And so in my question, you know, we're just
5 talking about having -- where there's multiple things that happen that
6 ultimately --

7 MR. JHURANI: Yup.

8 JUDGE BELISLE: -- are required to get from one train station to
9 the next. But in the context of the trigger, is the trigger the event or
10 condition that essentially sets the train in motion? So be it, there's still has to
11 be a couple other things along the way to make that happen.

12 But to me, the term trigger has a weight to it, that it's some type of
13 initiating event that while there might be something else that has to happen
14 also, depending on the particular scenario, that initiating event is your
15 trigger; and therefore, you know, the sort of the train is moving. So be it, it
16 has to have some checks along the way or something else to cause it to
17 actually be delivered.

18 But I'm just trying to separate the difference between what a
19 message delivery trigger is versus sort of the rest of the stuff that might have
20 to occur beyond that trigger itself to actually get the delivery.

21 MR. JHURANI: Yeah, Your Honors. Let me --

22 JUDGE BELISLE: I mean, the question is, do we have to have
23 delivery as part of that trigger or is it just the initiating event?

24 MR. JHURANI: And I think, Your Honors, the reason I'm
25 exploring this is because it could be both. And we know that because if you
26 look at Slide 6 of the -- of our Petitioner's Demonstratives, it tells -- this

1 petition tells you -- or the '192 specification tells you what happens, how
2 these triggers work. The service control server link in the top left can
3 determine when to transmit based potentially on several parameters, which
4 are these triggers that occur.

5 So when these parameters occur and all these parameters that we
6 link in TS-23.140 and map to exact examples within the '192 specification,
7 the determination of when to transmit occurs. So it determines to transmit.
8 And so these are all conditions that need to be met. And once they are met,
9 delivery has -- is going to happen.

10 So, you know, and what that initiation looks like, what happens,
11 that's the part that I'm struggling to parse. Because in any system, you
12 would then take the message out of the buffer and then send it, right? But
13 that step that's critical to the delivery and that's critical to what happens
14 when the triggers have been satisfied, that does not happen until each of
15 those conditions -- either one, if the system is configured like that, or
16 multiple conditions have all been satisfied.

17 If it's okay, Your Honor, I'd love to touch on this -- go ahead.

18 JUDGE CASS: This is Judge Cass again. I'm going to ask you
19 another quick question. And I'll give you a little extra time if you need it. I
20 know we have been asking a lot of questions.

21 MR. JHURANI: Okay. Thank you, Your Honor. I appreciate
22 that.

23 JUDGE CASS: So in light of the language that we've been talking
24 about, that says that -- or at least some of the received messages, the receipt
25 of such a message. I'm trying to think of how to -- receipt of such message
26 by the message buffer system is not a message delivery trigger, do you agree

1 that -- I mean, does this mean that sometimes if, for instance, the message
2 was received by the buffer system and then was immediately sent on that
3 the -- in those situations, the message buffer system would be a message
4 delivery trigger?

5 But if you have other conditions that are looked at after the
6 messaging is received in the buffer, then the receipt of the message by the
7 buffer would not be a message delivery trigger. Would that be accurate?
8 I'm trying to figure out how best to interpret it.

9 MR. JHURANI: I think you're asking about the claim again, Your
10 Honor. And I appreciate the struggle. Frankly, the language does not -- is
11 not a model of clarity here. And just to revisit it where in at least some of
12 the received network element messages, the receipt of such a message by the
13 system is not a message delivery trigger. And it could be a trigger. It may
14 not be in some instances.

15 And so as Dr. Traynor has grappled and understood this language,
16 which, you know, it's gone uncontested, frankly, in this proceeding. He
17 explains that the receipt alone in MMS does not cause the delivery of the
18 message. It's not triggering a delivery. There is other things -- there are
19 other conditions that need to be satisfied. And so in the context of this claim
20 and as we map the claim in view of the MMS reference, it is those
21 conditions that must occur.

22 So the occurrence of the receipt of the message alone does not
23 trigger delivery. Particularly, as he said in that slide, in Slide 39, I believe,
24 that particularly when other conditions that are triggering delivery have to be
25 satisfied. And only when those are satisfied, message is delivered.

26 JUDGE CASS: All right. Thank you, Counsel. And you can go

1 ahead, I said I'll give you a few extra minutes.

2 MR. JHURANI: I appreciate that. I did want to save a little bit of
3 time for Mr. Monaldo too, because I know he wants to talk a little bit about
4 Houghton. So I'll be brief with Claim 9. And I'll draw -- I'll -- let me
5 actually state this. So for Claim 9, here's -- the way the proceeding has
6 spread out, the POR did not address what was in the petition. We identified
7 that deficiency in our reply. And what we see in the sur-reply and what we
8 heard today, again, was yet another pivot. And that pivot in the arguments
9 showed up in the -- showed up. And it was that the MMS standard would
10 now presumably call for separate and unique timers.

11 And to flag that and illustrate where they say this, you can look at
12 Patent Owner's Demonstratives at Slide 30, where they say an earliest
13 desired time of delivery timer is unique to each message. Interestingly,
14 Headwater now seems to acknowledge that the MMS standard would
15 include such timers. But now, according to Headwater, these timers would
16 not be recurring. They would be separate and unique.

17 In the accusations of newness that have been lobbed today, this
18 argument is as clean as they come on a brand-new argument. There's no
19 reason that it could not have been raised in the POR, particularly, if
20 Headwater had engaged with a theory that was actually presented in the
21 petition. This assertion that there would be a separate and unique timer, if
22 we even consider it at this juncture, that it's pure attorney argument.

23 Headwater does not and, in fact, cannot provide support in the
24 MMS standard for this assertion, or anywhere in the record, for that matter.
25 An absent -- that foundational support that is missing from the record, this
26 assertion should be given little or no weight.

1 But compare that and juxtapose that with our evidence, the
2 evidence of record, including the testimony of Dr. Traynor, who explained
3 that it would be obvious for a timer to be used and reused each time or
4 whenever a message is received, thus satisfying the periodicity of this claim.
5 And that's shown on Slide 51 of our demonstratives.

6 This testimony was not addressed in the POR. They didn't ask Dr.
7 Traynor in deposition about it. They didn't seek his deposition after the
8 reply declaration either, didn't talk to him once, even though they claimed
9 they got 11,000 words, didn't feel the need to even ask him a single question
10 about it. So in the end, this new theory, even if considered, should frankly,
11 be given no weight, conclusory and refuted by undisputed expert testimony.

12 So with that, Your Honors, I'll -- unless you have questions of
13 course, I'll turn it over to Mr. Monaldo so he can say a few words about
14 Houghton.

15 JUDGE CASS: Okay. No questions for me. And I'm not seeing
16 any from any of my co-panelists, so please --

17 MR. JHURANI: All right. Thank you, Your Honors.

18 MR. MONALDO: Thank you, Your Honors. And just to indulge
19 on how much time would I have remaining?

20 JUDGE CASS: Well, we're a little over -- about two minutes over
21 already. So I would say, if you can get it down to the next five minutes or
22 so, that would be great. I mean, I don't want to cut you short, so I don't want
23 to say that's a strict timetable.

24 MR. MONALDO: Yeah.

25 JUDGE CASS: But, you know, I'd say, as brief as you can be
26 while still making the arguments that you feel you need to do.

1 MR. MONALDO: I'll try, Your Honor. And I always regret going
2 second. In any event, I'll just return us back to Slide 67. I did want to say a
3 brief mention of Patent Owner's argument that we didn't rebut Dr. Brogioli's
4 testimony. I'll just remind you we have the Lee reference in the TS-24.14
5 reference, providing corroborating evidence that application servers provide
6 these application identifiers.

7 These references were in the petition. You never heard about them
8 from Patent Owner, not in the briefing, not in any declaration that was
9 presented by Dr. Brogioli, and not in today's hearing. These are the pieces
10 of evidence that have not been addressed, and that is by Patent Owner.

11 Moving to Slide 69, you can see where we do address and rebut
12 Dr. Brogioli's theory. At the upper right of Slide 69, you see paragraph 101,
13 where Dr. Traynor talks about the Lee reference when we talked about as
14 supporting the notion that application servers provide the application
15 identifier in push messaging environments.

16 And then in paragraph 103, you see Dr. Traynor's testimony that
17 says, on the other hand, adding the responsibility of including the application
18 identifier for the destination application for the push server would add
19 undue -- overhead and burden to the push server. Because under this
20 construct, the push server would need to receive a message, determine the
21 source, determine intended application, determine the application, and add
22 that information to the message.

23 So that's Dr. Traynor's testimony, rebutting what Dr. Brogioli said
24 about the need for it to be in the push server. Regardless, our position is
25 obvious, that you'd have it in the application server. And the only evidence
26 of record showing you one of these two devices is our evidence, the Lee and

1 the MMS references. And you can see that -- and maybe I'll turn you over to
2 Slide 41 of Patent Owner's Demonstratives. This is Dr. Brogioli's testimony.
3 Notably, you won't see any citations to any evidence.

4 And again, this is Slide 41 of Headwater's Demonstratives,
5 paragraph 98, from Dr. Brogioli's declaration. There's no evidence.
6 Compare that to what Dr. Traynor submitted to you. Dr. Brogioli has
7 nothing. And Dr. Traynor has two references supporting what he's saying.

8 There's no evidence to show that this example, this Gmail example
9 that somehow sends messages to Gmail and Outlook and Apple, whether
10 that example even exists, and certainly no evidence showing that when you
11 have that application or that example, there's a push server that in that
12 context is adding the application identifier or the push server adding an
13 application identifier in any context. There's just no evidence of that.

14 And in light of the evidence that Dr. Traynor provided to you,
15 which has not been addressed by Headwater, the only conclusion supported
16 by this record is one that finds it obvious to consider the application -- or the
17 application server as the source of the application identifier.

18 So unless there any questions on Houghton -- or I guess I did want
19 to -- if Your Honors would indulge me, there's been a newness argument
20 raised in -- mention of the reply declaration. You know this, 11,000 words,
21 this is an exaggeration. The portion of Houghton in that declaration is
22 paragraphs 81 to 104, of an 108-paragraph declaration. A small subset of
23 the reply declaration was directed to this issue.

24 You also heard nothing from Patent Owner about complaining
25 about the length of that declaration, asking to submit evidence. And Patent
26 Owner didn't even depose Dr. Traynor on that declaration.

1 Additionally, if you look at the Patent Owner response, they knew
2 about our obviousness argument. It's clear. They tell you they had the
3 evidence they needed. Dr. Brogioli's testimony developed to combat an
4 obviousness argument.

5 And if you look at our petition, it's pages 67 to 71, where we set
6 this theory. I'd encourage you to go through the declaration. Dr. Traynor's
7 original declaration has more details. In the interest of time, I'm just going
8 to give you paragraph numbers to look at. I was going to walk through
9 them. But I know we're short on time.

10 I'd start with paragraph 326, which shows obviousness in multiple
11 application servers. Paragraph 328, obvious of application specific
12 messages. Then 330, it starts us off with an obviousness theory on this
13 issue. 332 talks about a data connection between the application server and
14 the mobile application in the entire path. And then 333 talks about how the
15 messages in the path have an identifier.

16 And 334 provides a conclusion of obviousness in light of all of
17 these above disclosures that under these earlier paragraphs. And then it goes
18 on to discuss the Lee and the MMS references and the obviousness of using
19 an application identifier.

20 Certainly, this was a theory that was presented in the petition. And
21 what we submit in reply was responsive to the arguments that Headwater put
22 forth in their Patent Owner response.

23 And then finally, I just talked briefly about Munson. If you turn to
24 our Slide 76 again, you'll see Munson's testimony. Certainly, we have a
25 schedule of time or event, a schedule that's talking about recurrence and it's
26 talking about time.

1 On Slide 77, you see Dr. Traynor's testimony, where he cites a
2 dictionary definition of the term schedule, where you're allocating periods of
3 time. How do you do that in a consumer system? You use a timer, simple
4 as that.

5 And you heard from today that Patent Owner was talking about,
6 oh, it could just be a human pushing these service updates out at particular
7 time. That's not what Munson teaches you. It's automated messaging. The
8 application server provider that's referenced in paragraph 44 of Munson is a
9 computer system. You see that in paragraph 35 of Munson. And it's an
10 automated process that's pushing these contents on a recurring schedule
11 during off-peak hours.

12 And finally, on Slide 78, lower right-hand side, again, periodic
13 updates in the '192 patent talk -- or are very much aligned with the system
14 maintenance updates provided by Munson server during peak hours.

15 So with that, Your Honors, I'd be happy to address any other
16 questions you've had and would welcome them. But I -- that is what I
17 wanted to present on the rebuttal.

18 JUDGE CASS: All right. Thank you, Counsel. I don't have any
19 more. And I don't see any more from my co-panel judges. So thank you
20 very much. So I would turn to Counsel for Patent Owner. And I have -- I'm
21 going to give you the same amount of time that Petitioner had, which I think
22 is an extra 10 minutes. So you will have 19 minutes for your rebuttal.

23 MR. MILKEY: Thank you, Your Honor. So I want to touch on --
24 well, there were a lot of sort of new issues raised, but just in the interest of
25 keeping things sort of logically aligned, we're talking about this periodic
26 timer in Munson. And there's sort of been this new argument in -- at this

1 hearing, which is that, oh, if you have a schedule in any sort of computer
2 system that just is automatically some periodic timer, I would submit that's
3 not at all the case.

4 If, for example, Windows is pushing out major software updates
5 they may target, we're going to push these out at night on certain times, but
6 they wouldn't use a timer necessarily to do that. They're going to wait until
7 there's a software update to push. And then they're going to have engineers
8 validating the software update. They're going to, you know, work on
9 making sure that it's ready to go.

10 And when it's ready to go, an engineer will tell the system, okay,
11 push this update. Maybe, they would use a timer to do that. But there's no
12 evidence there would be a recurring timer. They're going to wait until
13 they've evaluated whatever software update, they're going to push, and then
14 they're going to do that.

15 So in terms of, you know, the one thing I think Counsel said,
16 which is accurate is Munson doesn't teach you, whether it's -- you know, it
17 doesn't teach you that it's a human doing it. Well, yeah, Munson doesn't
18 teach you anything about how it's happening. It just says content can be
19 pushed according to a schedule of time or event.

20 And, you know, for them to -- when they didn't even have an
21 obviousness opinion on this in the petition -- and now they're saying it's
22 obvious. But even in their reply, they don't explain why this would be a
23 recurring timer, you know. It's just -- this is a very new argument.

24 In terms of, you know, turning back to the Ground 1, which is the
25 plurality of message delivery triggers, I -- again, in view of what Counsel
26 argued regarding the 1D3 requirement that for receipt of at least some of the

1 messages -- a message delivery -- you know, message receipt is not a
2 message delivery trigger. There's been no explanation throughout this
3 argument as to how that -- this requirement is satisfied.

4 We go to Samsung saying that it's not a message delivery trigger
5 because message receipt alone would not trigger message delivery. Again,
6 this is the petition at page 23. What's I think fatal to their argument, though,
7 is they don't allege that any other condition alone would trigger message
8 delivery. They go through all of these different conditions. They have
9 message retrieval requests. But they don't argue that message retrieval
10 request alone triggers message delivery.

11 So that can't be a message delivery trigger under their treatment of
12 this aspect of 1D3. They don't allege that active connection alone triggers
13 message delivery because there are other conditions involved. They don't
14 allege that a conformist to a size restriction alone triggers message delivery.

15 So what's very clear is that they're applying different meanings of
16 message delivery trigger based on whether they're in the positive limitation
17 of a plurality of message delivery triggers. Or whether they're in the
18 negative limitation, where the receipt of such a message by the message
19 buffer system is not a message delivery trigger.

20 You heard Counsel say that they didn't understand this claim.
21 They said that this claim is not a model of clarity and that they've struggled
22 to make sense of it. The only way to make sense of it is the way the Patent
23 Owner has applied it, which is that message delivery trigger is referring to a
24 sufficient condition to trigger message delivery.

25 And I think, Your Honor, is that this is consistent with, I believe,
26 the comments that Judge Belisle is making, which is it's really something

1 that sets in place the message delivery, it sort of sets it in motion. What
2 consistently sets message delivery in motion -- there may be other conditions
3 involved, but what consistently sets in place message delivery is the retrieval
4 requests.

5 This is Headwater's Demonstrative Slide 7. And this says, upon
6 retrieval request, the recipient MMS Relay/Server shall deliver the MM to
7 the recipient MMS User Agent. Yes, there may be other conditional things
8 involved that maybe there's, you know, there has to be an active connection
9 maybe the user agent has to be turned on, you know. There can't be a
10 thunderstorm that's causing a power outage that the device is using.

11 But what really sets this in motion is the retrieval request. And
12 that's consistent. Counsel recognized that there is no message delivery
13 without a message retrieval request. The message retrieval request is the
14 central core of what causes message delivery, which within the TS
15 specification, that's exactly what we said in our Patent Owner's response.
16 That's exactly how this works.

17 And if -- by pointing to other things that need to happen before
18 message delivery occurs, like what Samsung is doing, they can't square that
19 with the 1D3 requirement that for at least some message delivery -- for at
20 least some of the received messages, message receipt by the message server
21 is not a message delivery trigger. Because everything I've heard them say
22 today, when they're talking about message delivery triggers, they all
23 encompass every time a message is received by the message server, that
24 would be a message delivery trigger under how Samsung has articulated its
25 understanding of message delivery trigger.

26 And Samsung is right that the claim doesn't make any sense when

1 you interpret it that way. But, you know, and if you do interpret it that way,
2 they don't show that Limitation 1D3 has been satisfied. So ultimately, I
3 would just respectfully request Your Honors that we do think that message
4 receipt -- this negative limitation of 1D3 is -- this negative limitation of 1D3
5 wherein for at least some of the received network element messages, the
6 receipt of such a message by the message buffer system is not a message
7 delivery trigger.

8 We actually do think that TS-23 does not violate this requirement.
9 We do think that because receipt of the messages isn't sufficient to deliver
10 the message to the user agent, we don't think that this runs afoul of it.

11 But I would respectfully request Your Honors that if you do accept
12 Samsung's interpretation where all necessary conditions for message
13 delivery are message delivery triggered, I would respectfully ask that you
14 think about in writing your opinion, how this can be squared with Limitation
15 1D3. Because while we do think that 1D3 is satisfied by TS, it -- we do not
16 think it would be satisfied under the way that Samsung is interpreting the
17 claim now.

18 So that's something that I would just request because I do believe
19 that's a big inconsistency.

20 JUDGE CASS: And Counsel, this is Judge Cass. So you're
21 saying -- you just said you think it is satisfied by TS and --

22 MR. MILKEY: Yes, Your Honor. Under our claim construction,
23 under our interpretation of message delivery trigger, we don't think that this
24 highlighted portion of 1D3 is problematic for Samsung. But we do think
25 that it's problematic for Samsung under their interpretation of the claims,
26 which is that any necessary condition for message delivery is a message

1 delivery trigger.

2 So for example, they've said that periodic polling, which is how the
3 MMS server gets the message in the first place is a message delivery trigger,
4 that -- they've argued this. So that clearly shows that receipt of the message
5 is a message delivery trigger. And they don't point to any instances of a
6 message being received that would not be a message delivery trigger under
7 their interpretation.

8 So I do think that there's no way to square Samsung's application
9 of -- you see, there's -- in Limitation 1D3, there's at least two instances of
10 message delivery trigger. It's the logic to determine when one of the
11 plurality of message delivery triggers has occurred. They interpret that one
12 way. And then there's the receipt of such a message by the message buffer
13 system is not a message delivery trigger. And they interpret message
14 delivery trigger a different way in this part of the claim.

15 And there's no consistent way that they can meet both. So either
16 they win on the first part of 1D3 and lose on the second part, or they lose on
17 the first part and win on the second part. And so I would just ask that the --
18 that Your Honors evaluate on both of those limitations together and craft an
19 opinion that is consistent between both of those limitations and applies the
20 same meaning of message delivery trigger between both limitations.

21 JUDGE CASS: So Counsel, this is Judge Cass. Sorry, your
22 position, I take it is that the TS reference discloses for at least some of the
23 received network element messages, the receipt on such a message by the
24 message buffer system is not a message delivery trigger because it discloses
25 a request from the user device, but it doesn't disclose the plurality of
26 message delivery triggers; is that correct?

1 MR. MILKEY: That's correct, Your Honor.

2 JUDGE CASS: Okay. And so what is the plurality of message
3 delivery triggers in the '192 patent?

4 MR. MILKEY: Well, in the '192 patent, I think the actually
5 clearest example of this is -- if you let me pull up my -- pull up exhibit --
6 sorry, Exhibit 1001, the specification again doesn't clearly define message
7 delivery trigger. It talks about triggers being based on certain things. The
8 dependent claims, though, do give examples of this. And it's very explicit of
9 examples.

10 So for example, Claim 9 says that one of the message delivery
11 triggers is the expiration of a periodic timer. Claim 12 talks about the -- or
12 sorry, Claim 11 talks about message delivery triggers being the receipt of a
13 transmission on the respective secure message link from the device link
14 agent of the given one of the wireless end-user devices. So these are giving
15 two examples of different message delivery triggers, one being an expiration
16 of a periodic timer.

17 So again, the example I gave before was a message link server
18 could have a timer running that every 30 minutes, all of the messages that it
19 receives will be pushed to all of the devices it's in communication with. So
20 that would be an example of Claim 9 being satisfied.

21 An example of Claim 11 being satisfied is a message link from the
22 device link agent. And so this is exactly like what's happening in TS-23,
23 which is there is a retrieval request, for example. So these are two different
24 message delivery triggers, the periodic timer, which to use Judge Belisle
25 words sort of sets the delivery in motion when that timer has expired, that
26 30-minute recurring timer has expired, or there can be a retrieval request, for

1 example, consistent with Claim 11.

2 And so, you know, I do think that the specification talks about
3 triggers and the triggers can be based on different things, but I just want to
4 note --

5 JUDGE CASS: So if you had both of those things, let's say you
6 had a receipt -- a request from the user device and you also had a timer,
7 would both of those be triggers, or would only one of them be triggers?
8 How would that work?

9 MR. MILKEY: I think that -- Your Honors, I think the way I'm
10 envisioning the system -- and again, with these hypotheticals, it's always a
11 little dangerous because it does very much depend on system
12 implementation. But what I had in mind as I was talking about these
13 hypotheticals was you have a system where, you know, a user agent can just
14 not ever request messages from the system. And if it doesn't request a
15 message from the system, the system will send it whatever messages exist
16 every 30 minutes.

17 And so in that instance, when the timer expires, that would be a
18 message delivery trigger. But then in the instance where the user agent --
19 when the device, you know, the software running on the device sends a
20 message requesting a message retrieval before that 30-minute window has
21 expired, for example, that would be a message delivery trigger. And so it
22 depends on which message is involved, you know. In this instance, it would
23 be whichever trigger actually caused delivery of that particular message.

24 But either one of those things would be sufficient for message
25 delivery, just let me be clear. If there is a message that exists on the server,
26 whether that 30-minute timer expires or the retrieval request is received,

1 either of those would be sufficient. And so they are two distinct and
2 separate message delivery triggers.

3 JUDGE CASS: Even when they occur for the same message?

4 MR. MILKEY: I don't think that they ever could occur for the
5 same message in this example. Because if I have a retrieval request that
6 have -- is for a particular message, then that would be sent before the
7 expiration of the periodic timer. Whereas, if, you know, the periodic timer
8 sent the message -- if that caused the message to be sent, then I wouldn't be
9 sending a retrieval request for it or it would be an invalid retrieval request
10 because it would be a retrieval request for a message that had already been
11 sent.

12 JUDGE CASS: Well, what if you have a retrieval request for
13 message that is sitting in the buffer, but the timer hasn't expired yet?

14 MR. MILKEY: Yes, Your Honor. So in that instance, the system,
15 upon receiving that retrieval request, would trigger delivery. And it would
16 not send that message based on the expiration of the periodic timer because
17 it would have already sent the message in response to the retrieval request.
18 Does that make sense?

19 JUDGE CASS: Well, what if you had a situation where it waited
20 until after the timer?

21 MR. MILKEY: If it waited until after the timer, I would say that
22 probably the timer in that case would be the retrieval request, because that
23 really does set it into motion. It is the thing that -- the way you would frame
24 it, I think, is either the timer would be the thing that sets it into motion, if
25 you're interpreting it in a particular way, like, if we're -- if the interpretation
26 of it, where it's something that sets it into motion, it would be the timer.

1 But if we're talking about the sufficient condition, I think it would
2 be the confluence of both of those things. It would be the timer having
3 expired in conjunction with the message retrieval request having been
4 received. And those two things together would constitute a single sufficient
5 condition, a single retrieval - sorry, a single delivery trigger.

6 JUDGE CASS: Okay. Thank you.

7 JUDGE BELISLE: Counsel, Judge Belisle, before we jump off on
8 this, you mentioned, you know, our crafting a decision in this case. And
9 what I'm hearing from the parties, you have a claim that recites message
10 delivery triggers. And there's no agreement as to what that means, which
11 means it's disputed, which means we have to define what a message delivery
12 trigger is in order to apply the art in this case.

13 So at some point in this decision, there's going to be a sentence that
14 says, we find a message delivery trigger means what does it mean? What is
15 the rest of that sentence for what a message delivery trigger means in Claim
16 1 from Patent Owner's viewpoint?

17 MR. MILKEY: Your Honor, I would -- our position has been that
18 it is whatever is sufficient to cause message delivery. We also believe that
19 that is very consistent and closely related to your proposal, which is what
20 sets the message delivery in motion. In either of those cases, it would be a
21 valid retrieval request, you know. While there's an active network
22 connection, I think that that's consistent between either of those
23 understandings.

24 I do think that, you know, what Samsung has proposed is -- they
25 haven't really proposed anything clearly but is -- the only thing that makes
26 their theory work is if these are necessary conditions. But then that -- as

1 we've discussed, that doesn't work with the negative limitation of Element
2 1D3.

3 I also want to return to a question that you asked earlier, Your
4 Honor, about if you do find there to be a plurality of message delivery
5 triggers, do any claims survive? And I want to clarify that I don't think I
6 fully appreciated the scope of that question. But I do think that all claims
7 would survive under that instance. Because for Ground 1, again, there's this
8 internal inconsistency between the negative limitation and the positive
9 limitation of Element 1D3.

10 And so if there -- if you find that there are a plurality of message
11 delivery triggers, we believe that the corresponding finding would have to be
12 that the negative limitation of 1D3 would not be met in that instance. And
13 then separately, for Ground 5, the dispute does not actually hinge on a
14 plurality of message delivery triggers. It hinges on this application identifier
15 issue.

16 And it hinges on, one, whether you accept Petitioner's new
17 argument that this would have been obvious to do and not just, you know,
18 that if you accept their argument, that this would be -- basically, if you
19 accept their new reply theory, where there would be like reasons to modify
20 Houghton to do this. And if you accept that theory, even though it doesn't
21 actually address Dr. Brogioli's opinion, which is that, you know, you have an
22 e-mail -- he gave a very clear example.

23 Dr. Traynor didn't provide any specific opinion on it, which is that,
24 you know, an e-mail application server that doesn't know which application
25 the message is supposed to go to. And it's the push server that has to figure
26 it out.

1 I'll note that this is the petition -- I'm sharing my screen, the
2 petition at page 69, this is their theory about how the message from the
3 application server includes something identifying an application. So this is,
4 you know, first, they start off with Houghton's push server sends push
5 messages from an application server to a mobile application. The message is
6 sent using a data communication.

7 Then they say the message push from Push Server 401801 to Push
8 Client 404804, includes a data packet, including information specifying
9 which Mobile Application 406 for multiple applications is the message
10 recipient. And that's what they're alleging is the identification of an
11 application.

12 And they're clearly pointing exclusively to the message from the
13 server -- the push server to the push client and not any information in the
14 application server sent to the push server. Then they have this conclusion
15 on -- off the top of page 70 that says a POSITA would have therefore
16 understood the Houghton discloses/suggests that the received network
17 element messages, push messages from Application Servers 702802 include
18 message content with data for the destination mobile application and
19 application identifier.

20 And so that is their whole theory in this regard. They talk about
21 sort of a separate thing if the present limitation requires an application
22 identifier for the application. And then they have some other things, how
23 you would get at the application identifier part. But that's -- we haven't
24 contended that it does require that. And that's not something that cures this
25 issue, those additional discussions.

26 So their whole theory on this, you know, messages from the

1 application server to the push server, including this is all based on this, you
2 know, one paragraph of saying that the messages push from Push Server
3 401801 to Push Client 404804 included. And there's no rationale in the
4 petition or the corresponding expert declaration as to why you would infer
5 that based on that, the message from the application server to the push server
6 includes this. They just -- it's just completely conclusory. They don't have a
7 prima facie case on this. The Consolidated Trial Practice Guide makes clear
8 that new arguments are improper when they are necessary to set forth a
9 prima facie case.

10 And while we don't -- we appreciate Your Honors' statement that
11 you're going to evaluate this case separately from the prior case denying the
12 institution on a related patent. We do think that that same logic applies
13 extremely closely and equally here, which is that they made this exact same
14 error in this case where they relied solely on what the message from the push
15 server to the push client included, and didn't have any logic or reasoning
16 regarding what the message from the application server to the push client --
17 sorry, from the application server to the push server included.

18 And in that case, they said that that wasn't good enough. We agree
19 with that. And even if you do consider their new arguments, though, they
20 don't address - even though they have full access to Dr. Brogioli's opinions
21 in this regard, they don't address his e-mail example. They don't address this
22 case where, obviously, the e-mail server doesn't necessarily know, you
23 know, which application this needs to go to. And the push server is by far
24 better positioned to make this determination.

25 And so in that instance, they just -- they don't even try to address
26 it, even though they spent -- you know, obviously we're not saying that they

1 spent all 1,100 words on this new argument, but it just shows that they have
2 lots and lots of new arguments throughout their reply. And this is a big
3 problem with that --

4 JUDGE CASS: Counsel, I think you have finished your rebuttal
5 time and actually gone a bit over. So --

6 MR. MILKEY: So unless there are any questions, thank you very
7 much.

8 JUDGE CASS: All right. Thank you. All right. Thank you to
9 both Counsel for Petitioner and Patent Owner for your time and preparation
10 and your argument, which was very well done. And we can tell that you put
11 a lot of time into it. And we really thank you for that.

12 So with that, we're going to adjourn the hearing. But if Counsel
13 could please stay on for a little bit to see if the court reporter has any words
14 or terms that she'd like some help with. But in the meantime, we as judges
15 are going to get off of the hearing. So we will get you an opinion in due
16 course.

17 Any final matters before we go?

18 MR. JHURANI: Thank you, Your Honors, appreciate the time
19 today. And nothing further from Petitioner's.

20 MR. MILKEY: Thank you very much, Your Honors. There's
21 nothing further from Patent Owner.

22 JUDGE CASS: All right. Well, thank you both. And this hearing
23 is adjourned.

24 (Whereupon, the above-entitled matter went off the record at 3:33
25 p.m.)

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